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PART IV

THE CONDUCT OF JUSTICE IN TWO LANGUAGES

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INTRODUCTION

4.01 The problems of bilingual justice.-

In this chapter we will consider the legal and practical problems resulting from the conduct of justice in two languages. Chapter V will be devoted to mixed juries. Chapters VI and VII will deal with the operations of federal and provincial quasi-judicial boards which also have to render a form of justice in two languages. As will be seen, bilingual justice presents a multitude of difficulties, none of which are insoluble. We have not studied in detail the question of linguistic qualifications of the judiciary and the Bar. Unfortunately, we neither had the time nor the means to do so within the scope of this research project. The problem is not too severe in Quebec where most lawyers and judges as a matter of fact have a knowledge of both languages which can vary from being merely adequate to being excellent. But, it can arise within federal tribunals the members of which are only occasionally appointed from the Quebec Bar and in the various other jurisdictions where, as we will see, justice must be rendered in both French and English. Obviously, outside Quebec, the knowledge of French cannot be taken for granted. This underlines the importance of a satisfactory system of interpreters if justice is to be truly bilingual in Canada. Naturally, the ideal would be that all

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participants in judicial proceedings would know both languages thoroughly so that no interpretation would be needed. But this is utopian. Even when the law permits the parties to use either language in their written proceedings or in addressing the court, such right is effectively nullified unless the language used is understood by the other parties and by the bench, either by personal knowledge or through translation and interpretation. This is why we have paid a great deal of attention to the systems of interpretation existing in the various provinces. Our survey, incomplete though it was, has led us to the inescapable conclusion that the training, screening and availability of interpreters are completely inadequate in Canada. Furthermore, since most court proceedings have to be recorded, either by stenography or some mechanical means, we have also eluded to the problems arising from the insufficiency of court stenographers. While a much more widespread knowledge of both languages is the prerequisite for truly bilingual justice, we do not think that even a first step can be taken in rendering our system of justice more bilingual than it presently is without great improvements in the system of interpretation and recording of court cases. We also suggest that further research be conducted to determine other factors which militate against the use of either of Canada's official language where it is permissible so to do. There is evidence that parties or their counsel will often proceed in a language other than their own for psychological or other reasons which should be investigated in depth by means of interviews and thorough samplings.

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A. HISTORICAL BACKGROUND OF BILINGUAL ADMINISTRATION OF JUSTICE[1]

4.02 The Cession.

During the period immediately following the Cession no text of positive law gave the French language an official status, but neither was there any text of law which abrogated its use and replaced it with English as the official language of the Colony. Indeed, art. XLV of the Articles of Capitulation of Montreal shows that it was the intention of the British to retain the records, all in the French language, of the courts of the former Regime.[2]

4.03 Military Regime: French militia courts.

On January 16, 1760 General Murray issued a commission in the French language to Sir Jacques Allier making the latter a civil and criminal judge.[3] Allier was the first French-Canadian judge under British rule. The British authorities also entrusted the administration of justice in the districts of Montreal and Three Rivers to French militia officers.[4] They thereby insured that disputes would be tried by the inhabitants enjoying the greatest respect and who would understand the language of the litigants. French-Canadian clerks, bailiffs and other French-

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[1]All references in the footnotes of this section are to Chapter I.
[2]cf. 1.14
[3]cf. 1.15
[4]cf. 1.17

speaking assistants were appointed as officers of the courts.[1] Except when both parties to a suit spoke English as their native tongue, proceedings were conducted almost wholly in the French language in the courts.

4.04 Ordinance of Judicature of September 17, 1764: all judges English.

In the Ordinance of Judicature dated September 17, 1764 French-Canadians were forbidden to sit as judges.[2] This provision was inspired by the anti-Papacy policy adopted by the British. However, French-Canadians were admitted to serve on juries in the Court of King's Bench. In England, only Protestants were permitted to serve on juries, but in Canada Roman Catholics were allowed to sit on juries as a matter of expediency. French-Canadian advocates could practice in the Court of Common Pleas only, even though in England Roman Catholics were barred under the Test Act from a membership in the legal profession. Governor Murray made the following observation on these provisions of the Ordinance:

> "We thought it reasonable and necessary to allow Canadian advocates and proctors to practice in this Court of Common Pleas only (for they are not admitted in the other courts) because we have not yet got one English barrister or attorney who understands the French language."[3]

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[1] cf. 1.18 et seq.
[2] cf. 1.33
[3] ibid., sub-paragraph c).

French-Canadians were enabled by the same Ordinance to serve as bailiffs and sub-bailiffs even though they were prevented from serving on the Bench. The native population was thereby enabled to communicate with officers of the court in their own language.

4.05 Court of Common Pleas: essentially for French-Canadians.

In the Court of King's Bench all proceedings were carried on according to English law. In the Court of Common Pleas the proceedings were drawn up sometimes in French, sometimes in English, depending upon the language of the lawyer who prepared them. They were most often in the French language, since most of the business in the Court of Common Pleas was carried out by French-Canadian advocates.[1] But this Court was intended as a temporary expedient to be replaced by English-language courts once the French-Canadian inhabitants had become accustomed to English and English law.[2]

4.06 Ordinance of July 1, 1776: French lawyers allowed in all Courts.

As a result of the Presentments by the Protestant Grand Jurors of Quebec and the answers given by the French-Canadian jurors[3] the Report of the Committee for Plantation

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[1] cf. 1.36
[2] cf. 1.33 (e) and 1.34
[3] cf. 1.39 and 1.40

Affairs concluded that not only should the Canadian subjects be permitted to practice in all courts, but all magistrates should understand the French language.[1] The new Ordinance of Judicature dated July 1, 1766[2] adopted the recommendation that all Canadian subjects be permitted to practice in all courts, but said nothing with respect to magistrates. This Ordinance replaced in part the Ordinance of September 17, 1764.

4.07 1770: written proceedings allowed in both languages.

In the Report of the Governor and Council of Quebec submitted to the King in Council concerning the state of the laws and the administration of justice in the Province of Quebec dated September 2, 1769, it was recommended that Royal courts of judicature be established in each district.[3] Each district court was to consist of an English judge appointed by the King and invested with full powers to hear both criminal and civil cases within his jurisdiction. In addition to their legal competence, the judges were to have "a competent knowledge of the French language" for ease of communication with French-speaking litigants and witnesses. Each English judge was to have a French-Canadian lawyer as an assessor or assistant. The idea

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[1]cf. 1.46
[2]cf. 1.49
[3]cf. 1.61

of French-speaking judges was still alien to the administration. The Report further set out a procedure whereby the parties might draft their written proceedings in either language, at their option.[1] In An Ordinance for the more effectual Administration of Justice and for Regulating the Courts of Law in Quebec, dated February 1, 1770, it was provided that plaintiff's declaration could be either in French or in English. The Ordinance also provided for bilingual notices for the sale of seized immoveables.[2]

4.08 Further steps towards bilingual justice.

The Quebec Act wiped out the Proclamation of 1763 and all the Ordinances of the Governor and Council of Quebec relative to civil government and administration of justice.[3] In the Ordinance of February 25, 1777 the courts of civil judicature were re-established. That Ordinance provided that a writ of summons was to be in the language of the defendant.[4] Mixed juries were re-introduced into the law by this Ordinance, but only for civil cases. Mixed juries were not allowed in criminal cases until 1787.[5]

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[1] cf. 1.61
[2] cf. 1.64
[3] cf. 1.71
[4] cf. 1.77
[5] cf. 1.81

4.09 Appeals to be bilingual.

On January 29, 1788 rules of practice were adopted by the Quebec Court of Appeal. One of the rules was that all reasons for appeal should be in both languages.[1]

4.10 The Constitutional Period.

The results of an inquiry conducted in the year 1787 show that the English language was not always respected in the courts of Quebec.[2] It appears that not all the judges in the Court of Appeal knew both languages, particularly the French-speaking judges. Most English-speaking judges were bilingual. But some French judges had to rely on hasty verbal accounts of the proceedings from their bilingual brothers. It is also interesting to note that during this time official translation services were begun in the courts.[3] In Lower Canada under the Constitutional Act the administration of justice was carried on in both languages.[4] Also there was a provision for a French translator in the Court of King's Bench.[5] An 1801 statute repealed the 1785 Act which required that summonses be in the language of the defendant.[6]

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[1]cf. 1.82
[2]cf. 1.83
[3]cf. 1.86
[4]cf. 1.91
[5]id.
[6]id.

A case decided during that period casts an interesting light on the status of the French language. In R. v Talon[1] the defendant by preliminary exception asked that the action be dismissed because the writ of summons had been drafted in French. He claimed that this language was not the Sovereign's language and that for that reason the writ had to be declared illegal and null and void. Mr. Justice James Reid rendered the following judgment on the point:

> " The French language has been used by His Majesty in his communications to his subjects in this Province, as well in his executive as in his legislative capacity, and been recognized as the legal means of communication of his Canadian subjects. Courts of justice have at all times used this language in their writs and processes as in their other proceedings, as well before as since the Ordinance of 1785. It is for the benefit of the subjects that this was done, and the defendant cannot be permitted to say that he will not be sued in the language of his country."

In another case in 1825 a court in Kamouraska held a document invalid because it was in the French language. However, this court was lower in the hierarchy than the court which rendered the judgment in R. v Talon. It is therefore submitted that R. v Talon is the appropriate authority on the subject of the status of the French language under the Constitutional Act in Lower Canada.[2]

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[1] id.

[2] Maréchal Nantel, "La Langue Française au Palais" (1945) 5 R. du B. 201.

4.11 Bilingual justice in Upper Canada.

In Upper Canada under the Constitutional Act was passed the 1794 An Act to establish a Superior Court of Civil and Criminal Jurisdiction and to regulate the Court of Appeal[1]. That Act provided that notices attached to processes served on French-Canadian defendants were to be written in the French language. On March 27, 1839 the Legislature of Upper Canada passed a resolution making English the only language to be used before all courts of justice and in all public documents in Upper Canada.[2]

4.12 Bilingual justice during the period of Union.

The Union Act left untouched the status of languages in the courts. In the Lower Canada Administration of Justice Act of 1841 it was provided that summonses were to be issued in either language.[3] In an Act of 1843 relating to the administration of justice, it was provided that all writs and processes from the Court of Queen's Bench were to be in both languages.[4] Furthermore, where personal service of the defendant was not possible, notice to appear was to be printed twice in an English newspaper and twice

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[1]cf. 1.97
[2]cf. 1.98
[3]cf. 1.111
[4]id.

in a French newspaper. Writs of the Court of Appeal were to be in both languages. An 1846 Act provided that the languages to be used in proceedings was at the option of the parties.[1] In 1849 the Act respecting the Court of Appeals was repealed and the Court of Queen's Bench for appeals and criminal matters was set up.[2] Writs and processes issuing from this court were to be in either the English or French language. In the original Civil Jurisdiction Act of 1849 it was provided that either language could be used in summonses and that notice to appear for an absent defendant was to be printed in both languages. In the Superior and Circuit Courts Act of that year it was provided that bailiffs were to speak either English or French. The Bar Act of the same year contained a similar provision with respect to members of the Bar. The Superior and Circuit Courts Act also provided for the services of a translator.[3]

Pre-Confederation statutes in Quebec reflect the bilingual character of justice in the Province. When provision is made for summoning absentees by newspaper advertisements[4], or for notice of a sale of moveable property seized in execution[5], or for the issue of Writs of Prohibition[6], the law requires that such notices be published in both languages, either in specified newspapers, or

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1. id.
2. id.
3. cf. 1.111.
4. An Act respecting the ordinary Procedure in the Superior and Circuit Courts, 1861 C.S.L.C., c. 83, s. 81.
5. An Act to diminish the Expense of Sale in justice and of Confirmations of Title, and to facilitate the taking of Enquêtes, the summoning of absentees, the judicial distribution of moneys, the seizure of constituted rents representing seigniorial rights, and to provide for the review of judgments in certain cases, in Lower Canada, Canada, 27-28 Vict., 1864, c. 39, s. 9.
6. An Act respecting Writs of Prohibition, certiorari and scire facias, C.S.L.C. 1861, c. 89.

by the appropriate posting.

4.13 Bilingual justice in the early Northwestern Territories.-

In the district of Assiniboia in the West there was a fairly substantial French-speaking population. An incident in 1849 sheds some light on the status of the languages in the courts in Assiniboia. On May 17, 1849 a disturbance broke out because the Métis were dissatisfied with the refusal of a recorder to speak French in his court. On May 31 a meeting of the Council of Assiniboia was called to restore tranquility to the area. From then on the Council ruled that judges were to be bilingual.[1] French-speaking personnel were employed in the courts of Assiniboia.

4.14 Bilingual justice in Manitoba from 1870 to 1890.-

In the period from 1870 to 1890 both languages were used in the Manitoba courts.[2] In the Queen's Bench Act of 1895 provisions were made for interpreters in the courts.[3]

4.15 Northwest Territories after confederation.-

In 1877 the Northwest Territories Act was amended to allow for the use of both languages in the courts.[4] The courts of the Northwest Territories are still officially bilingual.[5]

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1. cf. 1.127.
2. cf. 1.140.
3. id..
4. cf. 1.151.
5. cf. 1.157.

B. WHICH COURTS IN CANADA ARE BILINGUAL.

4.16 Section 133 of the B.N.A.Act.

Section 133 of the B.N.A.Act, 1867, reads in part:

> "Either the English or the French language... may be used by any person or in any pleading or process in or issuing from any court of Canada established under this Act, and in or from all or any of the Courts of Quebec".

In the following section we will examine which are the courts of Canada which must be bilingual and enumerate the courts in Quebec.

4.17 Courts of Canada.

The following appear to be "courts of Canada" which are governed by Section 133 of the B.N.A.Act:

a) The Supreme Court. Section 101 of the B.N.A. Act gives parliament the right to constitute "a General Court of Appeal for Canada" and to establish additional courts for the better administration of the laws of Canada. The General Court of Appeal for Canada is the Supreme Court. It obviously falls within the ambit of section 133 of the B.N.A.Act. Of the nine judges who comprise the Supreme Court, three must come from the Bar of the Province of Quebec.[1] By convention, two of these three judges are

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[1] Supreme Court Act R.S.C. 1952, c. 259, s.6.

French-speaking. When cases are appealed from courts in the Province of Quebec, two of the Quebec judges must be present at the appeal or be replaced by an ad hoc appointment from the Quebec Court of Queen's Bench or Superior Court.[1] Lawyers are naturally allowed to plead before this court in either language and do not appear to hesitate to do so. The choice of language is determined by a variety of factors, including the mother tongue of the attorney concerned or the language of the particular judge to whom a reply or remark might be addressed. The judges from Quebec usually write their opinions on Quebec cases in French, in which language they appear in the official Canada Law Reports. The headnotes of cases in which such French opinions have been given, summarize those opinions in French, although until recently, these summaries had been published in English only.[2]

b) The Exchequer Court. There is no specific provision in the Exchequer Court Act[3] with respect to French-speaking judges or judges from Quebec. However, judges in this Court have written opinions in French, which the Canada Law Reports have reproduced in that language. Only recently, however, have summaries

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[1]id., s. 30 (2)
[2]Albert Mayrand, "Le bilinguisme aux Rapports judiciaires du Canada", (1964) 24 R. du B. 234.
[3]R.S.C. 1952, c.98.

of those judgments been rendered in French instead of only in English.[1] It should be noted that the Exchequer Court also constitutes, or exercises the jurisdiction of, the Court of Admiralty[2] and the Prize Court[3], so that section 133 of the B.N.A. Act applies to it as well. The Rules of neither court contained any provision dealing with language.

c) Courts Martial and Military Courts. Part VII of the National Defence Act[4] sets up a hierarchy of service tribunals ranging from summary trials by commanding officers or superior commanders to general, disciplinary and standing courts martial. Part IX[5] establishes a Court Martial Appeal Court. In our opinion, all these courts are governed by section 133 of the B.N.A. Act. According to F. Eugene Therrien, a member of the Royal Commission on Government Organization, bilingualism in the armed forces of Canada is virtually non-existent[6]. This is probably as true of courts martial as of other branches of the services, that we have not investigated the actual conduct of courts martial since the subject will be covered by another research project. It

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1. Albert Mayrand, loc. cit..
2. 1952 R.S.C., c. 1, cited as The Admiralty Act, s. 3 (1).
3. Canada Prize Act, 1952 R.S.C., c. 28, s. 3 (1).
4. 1952 R.S.C., c. 184.
5. as amended by 1953 S.C., c. 24, s. 5 and 1955 S.C., c. 28, ss. 11 and 12 and re-enacted by 1955 S.C., c. 5, s. 6 and by 1964 S.C., c. 21, s. 5.
6. Report of the Royal Commission on Government Organization, Ottawa, Queen's Printer, 1962, vol. I, pp. 70, 75.

must be noted, however, that Canada's military law provides for interpreters when required in service proceedings.[1]

d) Senate Divorce Officer. The Senate still hears divorce cases from Quebec and Newfoundland. An officer of the Senate hears evidence in these cases and subsequently reports his findings to the Senate together with his recommendations as to the disposal of the case.[2] This officer is a judge of the Exchequer Court who has been granted leave of absence for this purpose by the Governor in Council.[3] Whether this officer constitutes a court or not is a moot legal point. However, although it is not clear that he constitutes a court and hence falls under section 133 of the B.N.A.Act, proceedings before him are in fact bilingual, especially in view of the fact that the overwhelming majority of cases heard emanate from the Province of Quebec. Section 157 of the Standing Rules and Orders of the Senate of Canada relating to resolutions for the dissolution or annulment of marriage[4] provides

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1 Military Rules of Evidence, PC 1959-1027 Canada Gazette, Part II, S.O.R. 159-310, p. 769, s. 79. National Defence Act, 14 Geo VI, S.C. 1950, c. 43, s. 158 as amended by R.S.C. 1952, c. 310, s. 2 (II).

2 Dissolution and Annulment of Marriages Act. 12 Eliz II, S.C. 1963, c. 10, s. 3.

3 Exchequer Court Act.,1952 R.S.C., c. 98, s. 6A as amended by 1964, c. 14, s.3

4 adopted during the session of 1963 and obtainable from the Queen's Printer in Ottawa.

for notices of petitions for resolutions dissolving or annulling a marriage to be published in the Canada Gazette. The language of such notice is not stipulated and it is sufficient that a notice be printed in either French or in English. Before 1963, the notices were printed in both languages in the Canada Gazette and also had to be printed in daily newspapers.

e) Provincial courts designated as federal courts. Several federal statutes designate specific provincial courts as the tribunals to try disputes or offences arising under their provisions. For instance, the Criminal Code designates which provincial magistrates or courts are endowed with the jurisdictions of a "court of criminal jurisdiction"[1] and define which specific provincial courts qualify as "superior courts of criminal jurisdiction"[2]. Similarly, the Bankruptcy Act[3] invests designated provincial courts "with such jurisdiction at law and inequity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act". The Canadian Citizenship Act[4] provides that the Cabinet may "designate any court or person in any part of Canada

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[1] s. 2 (10).
[2] s. 2 (38).
[3] 1952 R.S.C., c. 14, s. 140. The Bankruptcy Rules, P.C. 1954-1976, 1955-1 Canada, S.O.R., p. 159, s. 4, state that provincial rules of practice apply to all bankruptcy proceedings, insofar as possible.
4. 1952 R.S.C., c. 33 as amended by 1953, c. 23, 1953-54, c. 34, 1956, c. 6, and 1958, c. 24.

to act as a Court for the purposes of the Act" or "any officer of the Canadian Forces outside of Canada to act as a Court" for the purpose of dealing with applications for citizenship by persons serving abroad in the armed forces of Canada.[1]

"Court" is defined[2] as "any superior, circuit, county or district court and includes in the province of Quebec, any district magistrate and any court or persons designated" pursuant to a federal order-in-council as indicated herein before. In other words, while the Canadian Government can create Citizenship Courts, it normally designates existing provincial courts, or members of the Bench thereof, to exercise the jurisdiction of the Citizenship Court entrusted with deciding whether or not to recommend to the Minister that an applicant for citizenship "is a fit and proper person".[3]

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1. s. 34 (2) as amended by 1956, c. 6, s. 7.
2. In. s. 2 (h).
3. s. 30 as replaced by 1956, c. 6, s. 6.

In other words, Parliament has not created distinct entities, but has attributed the function of a criminal or citizenship or bankruptcy court to existing provincial courts. The constitutional position of these designated courts is not entirely without ambiguity. Are they governed by section 133 of the B.N.A. Act? A literal interpretation of this section would seem to preclude such reading, except, naturally, in Quebec. Section 133 applies to "any Court of Canada established under this Act". Strictly and narrowly speaking, there is a difference between the designation of an existing provincial court to exercise a specific jurisdiction and the establishment or creation of a tribunal. On the other hand, the designation of a provincial court is only a device to avoid the expense and practical difficulties resulting from a multiplicity of tribunals. Parliament could create independent criminal or bankruptcy courts if it saw fit. It could be argued that the spirit or intent of the Constitution are such that both languages should be admissible before any court in Canada exercising federal jurisdiction, no matter which legislative body contributed to its actual creation. This is obviously an impractical and utopian point of view in the present circumstances. It would be unreasonable to claim the right to conduct proceedings in French before the Supreme Court of Judicature of Prince Edward Island for instance, or before an Alberta Magistrate. But from a purely technical point of view, the argument is not totally absurd and could be pressed, albeit

without doubt unsuccessfully. Furthermore, if a real need ever arose for bilingual criminal justice or simply bilingual federal justice if it is to include all areas within the jurisdiction of arliament, it might be simpler to create special federal courts with their own procedure and qualified personnel rather than burdening existing provincial courts with a task which they cannot possibly fulfill. We are not aware of any conclusive judicial pronouncement on the subject and only raise these questions because it underlines the ambiguities and insufficiencies of section 133.

f) Courts in the Northwest Territories. Section 20 of the Northwest Territories Act[1] created a Territorial Court appointed by the federal government. This court had civil and criminal jurisdiction throughout the Territories.[2] In civil cases, an appeal lies from the Territorial Courts to a Court of Appeal for the Territories which is composed of the Chief Justice of Alberta, the Justices of Appeal of Alberta, and the judges of the Territorial Courts of the Northwest Territories and of the Yukon Territories.[3] As these courts are created by an act of Parliament, it is our opinion that section 133 of the B.N.A.Act

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[1]1952 R.S.C., c. 331 as amended by 1955 S.C., c. 48, s. 9.
[2]s. 23 (1).
[3]1952 R.S.C., c. 331 as amended by 1960 S.C., c. 20, s. 6.

applies to them and that French or English may be used in any pleading or process before them. We are also inclined to believe that this is also the case with the police magistrate provided for in the Northwest Territories Act[1] who exercise the powers of a justice of the peace or of any two justices of the peace and are vested with certain civil jurisdictions.

g) Courts in the Yukon Territories. The Yukon Act[2] created a Territorial Court of the Yukon Territories and the Northwest Territories.[3] The Act also makes provision for police magistrates with powers identical to those in the Northwest Territories.[4] In our opinion, an equally plausible case may be made for the application of section 133 of the B.N.A.Act to these courts of the Yukon Territories.

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[1] ss. 32 et seq., as amended by 1957-58 S.C., c. 30, s. 2.
[2] 1952-53, 1-2 Eliz. II , c. 53, ss. 27 et seq., as amended by 1960 S.C., c. 24, s. 6 et seq.
[3] s. 35 as amended.
[4] s. 36 as amended.

4.18 Courts of Quebec.-

Under s. 133 of the B.N.A. Act all Quebec courts are bilingual. This would include the Superior Court, the Provincial Court (formerly Magistrate's Court), the Court of Appeal (Court of Queen's Bench, Appeal Side), the Court of Sessions of the Peace, the Municipal Courts of Montreal and Quebec[1], and the Court of Queen's Bench, Crown Side, which is the Superior Court of criminal jurisdiction in Quebec[2]. If s. 133 of the B.N.A. Act is to be interpreted broadly we would even venture to say that the words "all or any of the Courts of Quebec" encompass all other provincial tribunals and more particularly all municipal courts in the Province of Quebec . The status of the Highway Safety Board (Tribunal de sécurité routière)[4] and of the Quebec Mining Judge (Juge des mines)[5] is not clear. Are they courts in the traditional sense falling within the scope of s. 133 of the B.N.A. Act or are they merely quasi-judicial boards which are not governed by the B.N.A. Act[6]? The Highway Safety Board is composed of 3 district judges appointed by the Provincial Cabinet[7] to hear appeals from decisions of the Director of the Motor Vehicle Bureau of the Province, suspending, cancelling or refusing to suspend, cancel, issue a permit or certificate of registration[8]. Since this is essentially an appeal

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1. Criminal Code, s. 2 (10) (a).
2. Criminal Code, s. 2 (38).

3. set up by the Highway Victims Indemnity Act, 1964 R.S.Q., c. 232, ss. 32-35.
4. Mining Act, adopted at the Fourth Session, Twenty-Seventh Legislature, 14 Eliz. II, on March 24, 1965 and coming into force January 1, 1966, ss. 276-298.
5. cf. 7.02.
6. s. 32
7. s. 33.

from an administrative decision, it might be argued that the Highway Safety Board is really a quasi-judicial entity and not really a court. The Mining Judge is also a district judge appointed by the Provincial Cabinet, but his jurisdiction seems to be somewhat more "judicial" in the traditional sense:

> "The Mining Judge shall have, to the exclusion of any other court, jurisdiction over all litigation respecting any rights, privileges or titles conferred by this act or any regulation, or under this act or any regulation.
>
> In particular, the Mining Judge shall have jurisdiction, to the exclusion of any other court, over all litigation respecting:
>
> (a) the existence, validity or forfeiture of any prospector's licence, claim, development licence, exploration licence, operating lease, mining concession, mining lease, special licence or exploration permit;
>
> (b) the perimeter, boundaries and extent of the land covered by any of the above mentioned titles."[1]

On the other hand, he also hears administrative matters:

> "The Mining Judge shall have jurisdiction over all matters within the competence of the Minister under this act:
>
> (a) By way of appeal in cases where an appeal lies;
>
> (b) Upon a reference by the Minister in any other case where the Minister deems it expedient."[2]

An appeal also lies from the decisions of the Mining Judge to the Quebec Court of Appeal:

> "Save where otherwise provided, an appeal shall lie to the Court of Queen's Bench sitting in appeal, in

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1. s. 278.
2. s. 279.

accordance with the rules of the Code of Civil Procedure, from any final decision of the Mining Judge."[1]

Section 133 of the B.N.A. Act is far from clear and its scope might depend on what interpretation is given to the word "court". But there is nothing in the Constitution limiting the definition of this word to superior tribunals.

Proceedings in Quebec courts have been conducted traditionally in both languages. The Summary Convictions Act[2] which governs all penal proceedings in the Province (i.e. from violations of provincial statutes or municipal by-laws)[3] does not contain a single pertinent provision. All 41 forms annexed to the statute, however, are given in both languages. Proceedings in the Quebec Court of Appeal, in the Superior Court, and in the Provincial Court (formerly Magistrate's Court) are governed by the Code of Civil Procedure which contains a few specific articles giving effect to s. 133 of the B.N.A. Act. Article 118, which applies to the Superior Court and the Provincial Court (formerly Magistrate's Court) states that writs of summons can be drawn up either in French or in English. Article 135a of the Code provides for publication of a synopsis in French and English of the order of a judge permitting service of a real action by newspaper in some cases of succession. A similar provision is found in article 136

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1. s. 297.
2. 1964 R.S.Q., c. 35.
3. s. 2.

dealing with service of writs on absent defendants. Article 137a, which deals with the service in Quebec of proceedings issued by foreign tribunals, declares that a true copy of such proceedings can be served on the defendant when it is drawn in French or in English, but must be accompanied by a certified translation if it is in another language. The rules of practice of the various Quebec courts which have adopted them[1] do not contain any pertinent provision. Neither the Provincial Court (formerly Magistrate's Court) nor the Criminal Court of lower jurisdiction have adopted any rules of practice.

4.19 Alberta and Saskatchewan.-

We have seen[2] that some doubt exists as to whether the courts of Alberta and Saskatchewan are technically only English and that a technical argument can be made for the right to use French in pleadings or processes in or issuing from their courts.

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1. Court of Appeal (in civil matters and in criminal matters); the Superior Court (general rules and rules for the District of Montreal).
2. in 1.165.

4.20 Other provincial courts.-

In 4.17 we concluded that the courts of the Northwest Territories and of the Yukon Territory, being constituted by Parliament, fell within the operation of s. 133 of the B.N.A. Act. The function of these courts is to administer the laws of Canada and the local ordinances. Federal jurisdiction to create them can thus be found in s. 101 of the Constitution. But what would be their position if the Northwest Territories or the Yukon were transformed into provinces with the right to constitute their own courts? It would appear to us that in such case the provinces could abrogate s. 133 of the B.N.A. Act which does not apply to provincial courts except in Quebec. If Parliament then designated such provincial courts to administer federal law instead of creating special federal courts, there would be no legal grounds to require bilingualism in the courts of the new provinces.[1] In other words, s. 133 cannot apply to courts created by a province except those in Quebec.

4.21 Mixed juries in Manitoba.-

As we will see[2] s. 536 of the Criminal Code provides for the right of a French- or English-speaking accused to request that he be tried by a jury composed of at least one-half of persons speaking his language. The Criminal Code does not indicate whether

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1. cf. 4.17 (e). Some provinces stipulate that only English can be used in judicial proceedings: e.g. Ontario in The Judicature Act, 1960 R.S.A., c.197, s.124 and Alberta in its former Interpretation Act , 1955, R.S.A. , c.16, s.40 which was abrogated by 1958 F.A. c.32. But generally, language practices in provincial courts is based on custom or usage and not on statutory authority if the replies to our queries from judges and petitioners across Canada are correct.
2. in 5.12 and 5.13

proceedings before such mixed jury can be conducted in both languages and to our knowledge the point has not been raised in any reported decision. Since the Manitoba Court of Queen's Bench is a provincial court , s. 133 of the B.N.A. Act does not apply to it and we have seen[1] that French is no longer an official language in Manitoba. The implication of the Criminal Code's recognition of the right to mixed juries in Manitoba; as we shall see in 4.29, it would appear that in a mixed jury trial the accused is entitled to demand that all the evidence be translated in both languages; counsel can address the jury in both languages; and the judge can charge the jury in both languages. Despite the absence of relevant reported jurisprudence in Manitoba, we do not see any reason why these rules which have been recognized by the Supreme Court of Canada do not apply to the western provinces as well.

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1. in 1.143 and following.

C- COURT INTERPRETERS

4.22 The need for interpreters in bilingual justice.-

The conduct of justice in two languages is intimately bound up with the availability of competent interpreters. The right to an interpreter means both the right to be able to testify in one's own language and the right to understand proceedings conducted in a language other than one's own. Admittedly, the right to interpretation is not peculiar to a bilingual or multilingual country and could be claimed by any one who does not understand the language of the forum. An accused tried in an American court and who only understands Japanese, is obviously entitled to have the evidence against him or on his behalf translated into the language he understands and is also entitled to testify in Japanese and have his testimony translated. A witness in a civil proceedings who does not speak the language of the court is normally allowed to testify in his own tongue and his testimony is translated for the benefit of the tribunal. But in a bilingual system of justice, where two languages are official, a party to judicial proceedings not only has the rights we have just outlined, but could claim, even in civil proceedings, to have the entire trial translated to him if he speaks one of the two official languages and the court uses the other official language. Furthermore, the unchallenged right to interpretation and the availability of competent interpreters, reinforces the right of a party in legal proceeding to conduct his case in the language he understands best. Thus, while interpretation is not synonymous with bilingual justice, it is often a condition sine qua non.

If any proof is needed of the necessity of a competent and readily available of interpreters, it can be found in a number of incidents reported in the newspapers during the last two years. In a criminal case in Pembroke, Ontario[1], the court refused to admit a confession by, and dismissed a charge against, a Montreal man, of possession of a stolen television set. Magistrate S. C. Platus ruled that suspect spoke French more fluently than English and that Pembroke Police Chief, Bert Dickie, who took the purported confession would have had difficulty in communicating with the suspect. The court recommended that "provision should be made for having French-speaking suspects questioned here (i.e. in Pembroke) in their own language as Pembroke is only five miles from Quebec border ... They (the accused) should be questioned in French, Polish or whatever language they best understand." In another fairly recent criminal case, this time in Ottawa, a French witness encountered difficulty in testifying in French before the Ontario Supreme Court.[2] Upon hearing the witness' request, the presiding judge asked her whether she spoke English. She replied that she did but that she wished to speak French. The judge ordered her out of the witness box commenting that French was not an official language in Ontario. When the court resumed, the judge had changed

1. cf. Canadian Press despatch published in the Sault Ste-Marie Star and in the Ottawa Citizen of May 28, 1964.
2. cf. The Daily Star, Toronto, April 23 and 24, 1964; and Lethbridge Herald, May 2, 1964.

his mind and allowed the witness to testify in French, since there was "nothing objectionable" about this. The judge explained that "she spoke in English before the grand jury and when a man is being tried for one of the most serious offences (murder) this court should not be turned into a theatre of any kind". The witness was quoted as explaining to newspapermen: "When I first talked to the grand jury I spoke English because I didn't realize interpreters were provided. Then I met the interpreter before I entered the Supreme Court the next day and I spoke to him. When I entered the witness box, I saw the interpreter sitting in front of me, and of course wanted to use him ... I express myself more accurately in my own language. When the future of a boy may hang on what you say, you must say it in the best and most careful manner you're capable of". In the case of former Government official Raymond Denis, which is still before the courts, one of the grounds raised by the accused's counsel for demanding a change of venue from Ottawa to Montreal, was the allegation that "court facilities do not measure up to" carrying on the proceedings through translation.[1] The trial of Raymond Denis was also delayed by the lateness of the English transcript of the evidence given at the Dorion Inquiry.[2]

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1. cf. The Montreal Star, July 15, 1965.
2. cf. The Montreal Star, July 29, 1965.

4.23 Legislative recognition of the right to interpretation.- Considerable recognition of the right to an interpreter in judicial proceedings can be found in the statutes of Parliament and of the various provincial Legislatures as well as in the rules of court. The general principles enunciated in the previous section are thus generally admitted in Canada. Here is a summary of the pertinent legislative provisions:

(a) Canada.- The Canadian Bill of Rights stipulates[1] that no Act of the Parliament of Canada shall be construed or applied so as to "deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted." The Bill of Rights only applies "to matters coming within the legislative authority of the Parliament of Canada".[2] There is no doubt, thus, as to the right to interpretation before any federal tribunal, commission, board or court. The situation is not as clear with respect to provincial courts applying

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1. 1960, 8-9 Eliz. II, c. 44, s. 2 (g).
2. s. 5 (3).

federal statutes since the application of the federal Bill of Rights to the conduct of proceedings in a provincial court is not well-defined, particularly when the provincial court deals with a federal matter only incidentally. Specific references to the right to have an interpreter are to be found in other statutes.[1] The Visiting Forces (North Atlantic Treaty) Act[2] ratified the North Atlantic Treaty, of which article VII (9) (f) provides that whenever a member of the force or civilian component or dependent is prosecuted under the jurisdiction of a receiving State, he shall be entitled "if he considers it necessary, to have the services of a competent interpreter".[3] Provisions for interpreters to enable prospective voters to communicate with the returning officers are also to be found in the Canada Election Act[4] and in the Canada Temperance Act.[5]

Provisions dealing with interpreters are found in a number of federal regulations. For instance, s. 25 of the Indian Referendum Regulations[6] states:

> "Whenever the electoral officer or the deputy electoral officer does not understand the language spoken by an elector, he shall appoint and swear an interpreter who shall be the means of communication between him and the elector with reference to all matters

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1. e.g. National Defence Act, 1952 R.S.C., c. 184, s. 158; Queen's Regulations Nos. 112-18 and 112-19, adopted pursuant to the National Defence Act; Rule 79 of the Military Rules of Evidence, P.C., 1959-1027, published in the Canada Gazette, Part II, S.O.R./59-310 at 769.
2. 1952 R.S.C., c. 284, s. 3.
3. The test of the treaty is annexed as a schedule to the statute.
4. 1960, 8-9 Eliz. II, c. 39, s. 45 (11) and Rule 41 found in Schedule A. A tariff of fees for interpreters in federal elections was established by order-in-council P.C. 1963-188, Canada Gazette, Part II, no. 165.
5. 1952 R.S.C., c. 30, s. 45.
6. P.C. 1958-1451, Canada Gazette, Part II, p. 1236, 1958 Canada, Statutory Orders and Regulations, no 437.

required to enable such elector to vote."

The Military Rules of Evidence[1] adopted pursuant to the National Defence Act, state:

> "Every person is competent as a witness unless the judge advocate finds that he is incapable of
>
> a) making his evidence intelligible, whether by expressing himself so as to be understood by the court directly, through interpretation by a person who can understand him, or in any other manner; or
>
> b) understanding the duty of a witness to tell the truth."[2]

The Rules in Admiralty[3] provide:

> "If any witness is examined by interpretation, such interpretation shall be made by a sworn interpreter of the court, or by a person previously sworn according to the form in the appendix No. 31."

Furthermore, s. 102 of the Rules provides:

> "When an affidavit is made in English by a person who does not speak the English language, or in French by a person who does not speak the French language, the affidavit shall be taken down and read over to the deponent by either of a sworn interpreter of the court or of a person previously sworn faithfully to interpret the affidavit. A form of jurat will be found in the Appendix hereto, No. 35."

(b) Alberta.- A limited recognition of the right to an interpreter is to be found in ss. 330 and 868 of the Rules of the Supreme Court of Alberta.[4] The Alberta Election Act[5] also makes allowance for interpretation if a prospective voter does not speak the language of the returning officer.

1. P.C. 1959-1027, Canada Gazette, Part II, p. 769, 1959 Statutory Orders and Regulations, no. 310.
2. s. 79.
3. P.C. 1495 of July 29, 1939.
4. Adopted by Order-in-Council of July 1, 1949. Consolidated in 1962.
5. 1956 S.A. 5 Eliz. II, c. 15, s. 85 (1) and (3).

(c) British Columbia.- We have been unable to find any relevant provision in the law of British Columbia except for the usual reference to interpreters in the Provincial Elections Act.[1]

(d) Manitoba.- A limited recognition of the right to interpreters is found in the Rules of Practice of the Court of King's Bench for Manitoba[2]. Provisions dealing with elections are found in the Manitoba Election Act[3] and in the Municipal Act[4].

(e) New Brunswick.- The New Brunswick Summary Convictions Act[5] refers in passing to interpreters, but does not regulate their use. No provisions dealing with interpreters are to be found in the New Brunswick Judicature Act or in the Rules of the New Brunswick Supreme Court. The Elections Act[6] contains the usual provision about interpreters.

(f) Newfoundland.- No specific provision dealing with interpreters was found in the statutes or regulations of this Province.

(g) Northwest Territories.- Several ordinances of the Northwest Territories provide for the use of interpreters[7].

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1. 1960 R.S.B.C., c. 306, s. 111.
2. Rule 252 and form 45, Winnipeg, Queen's Printer, 1939.
3. 1954 R.S.M., c. 68, s. 87.
4. 1954 R.S.M., c. 173, s. 159.
5. 1952 R.S.N.B., c. 220. The table of fees provides $2.50 per half day for interpreters and actual living expenses away from home of a maximum of $15.00 a day.
6. 1952 R.S.N.B., c. 1, s. 71 (1).
7. Coroners' Ordinances, 1956 R.O.N.W.T., c. 18, s. 22 (5); the Marriage Ordinance, 1956, R.O.N.W.T., c. 64, s. 13 and 35 (2); the Protection of Children Ordinance, 1956, R.O.N.W.T., c. 80, s. 44 (1). A tariff of fees for interpreters in criminal cases was decreed by federal order-in council P.C. 2750, Canada, Statutory Orders and Regulations, 1955, Vol. III, p. 2479. A tariff of fees for interpreters at elections was established by federal orders-in-council P.C. 1963-189, Canada Gazette, Part II, p. 176, and P.C. 1961-435, Canada Gazette, Part II, 451. See also the Municipal District Ordinance, 1956, R.O.N.W.T., c. 73, s. 21 (2) providing for interpreters at municipal elections.

(h) Nova Scotia.- Reference to interpreters is made in passing in the Court Reporters Act[1] and usual provisions are found in the elections statutes[2]

(i) Ontario.- Ontario law is quite explicit on the right to interpreters. Provisions are found for the right of the Crown to use interpreters in criminal investigations,[3] and at coroners' inquests[4]. The County Judges' Act[5] permits the appointment of official interpreters in county courts. Reference to interpreters is also found in the Ontario Rules of Practice No. 282[6]. The usual electoral provisions are also found in Ontario law.[7]

(j) Prince Edward Island.- We have been unable to find any pertinent provision in the law of this Province.

(k) Quebec.- Sections 21 and 319 of the actual Quebec Code of Civil Procedure provide as follows:

" 21. The judge may appoint an interpreter and allow him a reasonable compensation, which forms part of the costs of the suit."

"319. A person afflicted with an infirmity which renders him unable to speak, or to hear and speak, may be examined as a witness either by writing down his oath or affirmation and his answers, or by giving his evidence with the aid of signs, through an interpreter."

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1. 1954 R.S.N.S., c. 53, s. 6 (1).
2. Provincial Electoral Franchise Act, 1954 R.S.N.S., c. 228, s. 17 (1)(d) and Elections Act, 11 Eliz. II, 1962 S.N.S. c. 4, s. 108 (1) and (2).
3. The Administration of Justice Expenses Act, 1960 R.S.O., c. 5, s. 13.
4. The Coroners' Act, 1960 R.S.O., c. 69, s. 33 and 37 (7).
5. 1960, R.S.O., c.77, s. 14.
6. cf. Chitty's Ontario Annual Practice, 1964, p. 271.
7. The Election Act, 1960 R.S.O., c. 118, s. 90 and the Voters Lists Act, 1960 R.S.O., c. 420, s. 86.

They have been preserved in the new draft Code where they become respectively s. 305 and s. 296. This is an imperfect recognition of the right to an interpreter, but still one of the clearest in Canadian law. The usual electoral provisions are to be found in Quebec law.[1] The Coroners' Act[2] also procides for the use and payment of interpreters of a fee not exceeding the amount fixed by the Attorney-General.

(l) Saskatchewan.- The Revised Rules of Courts of the Province of Saskatchewan[3] give recognition in passing to the right to an interpreter. The usual electoral provisions are also found.[4]

(m) Yukon Territory.- Reference to interpreters is to be found in the Yukon Act[5] which permits the Commissioner in Council to make ordinances for the fees and expenses of interpreters and in the Coroners' Ordinance[6] which allows the Coroner to employ interpreters.

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1. The Election Act, 1964 R.S.Q., c. 7, ss. 251, 252 and 255; The Cities and Towns Act, 1964 R.S.Q., c. 193, s. 232; the Education Act, 1964 R.S.Q. c. 235, s. 144.
2. 1964 R.S.Q., c. 29, s. 14.
3. Queen's Printer, Regina, 1961, Rules 293 and 562.
4. Saskatchewan Election Act, R.S.S., 1953, c. 4, s. 93; the City Act, 1953 R.S.S., c. 137, s. 168; and The Town Act, 1953 R.S.S., c. 138, s.155.
5. 1952-53, 1-2 Eliz. II, c. 53, s. 16 (j).
6. 1958 R.O.Y.T., c. 24, s. 22 (5). A tariff of fees for interpreters in criminal cases and inquests was established by federal order-in-council P.C. 6423, Canada, Statutory Orders and Regulations, 1955 Vol. III, p. 3009. A tariff of fees for interpreters at elections was established by federal orders-in-council P.C. 1963-189, Canada Gazette, Part II, p. 176, and P.C. 1961-435, Canada Gazette, Part II, 451. The Judicature Ordinance, 1958 R.O.Y.T., c. 60, s. 14 also provides for the fees and expenses of interpreters.

4.24 The jurisprudence holds the right to an interpreter not to be absolute.-

Our survey of existing federal and provincial legislation or regulations in the foregoing section demonstrates that, apart from the occasional clear-cut recognition of the right in such statutes as the Bill of Rights, the Visiting Forces (N.A.T.O.) Act and the Quebec Code of Procedure, the Legislator seems to take the institution for granted and only deals with it in passing or incidentally. As a result of this legislative silence, it has been left to the courts to determine the extent of this right and to stipulate the conditions of its exercise. The courts have held that there is no absolute right for any one to have an interpreter: the judge has discretion to decide according to the circumstances.[1] The Ontario Court of Appeal has said:[2]

> "There is, moreover, much to be said in favour of the view that there is no inherent right in any foreigner that the proceedings taken in our Courts shall be made wholly intelligible to him, even though he should be charged with crime, and at a reasonable expense, to procure a person who could explain the proceedings to a foreign defendant. The cases in which a contrary doctrine is laid down are all upon some statutory or constitutional provision."

But it should be noted that this jurisprudence is more than half a century old and antedates by many years the Canadian Bill of Rights. We find that older cases have allowed interpreters whether requested by the parties or their counsel, and when a party or witness

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1. R. v Meceklette (1910) 15 C.C.C. 17 (Ont. C.A.) followed in R. v Sylvester, (1912) 1 D.L.R. 186 (N.S.S.C.); and Donkin v. Chicago Maru (1916) 28 D.L.R. 804 (Exch. Ct.).
2. In R. v Meceklette, see preceding footnote.

was shown not to understand the language of the court or not to be able to speak it with sufficient fluency to expedite the conduct of proceedings.[1] But proof that there has been no relaxation of judicial scepticism is to be found in the recent decision of the Quebec Court of Appeal which dismissed the appeal of a Pole who claimed that, although he had been a resident in Canada for several years, he had been unable to understand, in the absence of an interpreter, the nature of the charges brought against him and that this was the only reason why he had pleaded guilty.[2] The court's ruling was based on the questionable assumption that the appellant "a certainement eu l'occasion d'apprendre au moins les rudiments de l'une ou de l'autre de ces langues".

4.25 The right to an interpreter can be waived.-

Furthermore, the courts have repeatedly held that the right to an interpreter can be waived implicitly or explicitly.[3] The leading case on point, in England as well as in the United States and Canada, is the decision of the British Court of Appeal in R. v Lee Kun:[4]

> "When a defendant ignorant of or insufficiently acquainted with the English language is represented on his trial by counsel, the general rule is that the evidence must be interpreted to him, unless he personally or by his counsel dispenses with a trans-

1. Donkin v The "Chicago Maru" (1916) 28 D.L.R. 804; Ponomoroff v. Ponomoroff [1925] 3 W.W.R. 673; R. v. Wong On (No. 2) (1904) 8 C.C.C. 343.
2. Sadowski v La Reine [1963] B.R. 677, commented by Claude-Armand Sheppard in "Droit à l'Interprète", (1964) 24 R. du B., 148.
3. We will see in 4.28 that this is a widespread practice in Canada. cf. also 4.29.
4. (1914-15) 11 C.A.R. 293, [1916] 1 K.B. 337.

> lation. Such dispensation is in every case at the discretion of the judge, who must always be satisfied (including the case of deaf and dumb defendants fit to plead) that defendant substantially understands the evidence and the case against him."

As Lord Reading said:

> We have come to the conclusion that the safer, and therefore wiser course, when the foreigner accused is defended by counsel, is that the evidence should be interpreted to him, except when he or counsel on his behalf expresses a wish to dispence with the translation, and the judge thinks fit to permit the omission; the judge should not permit it unless he is of opinion that by reason of what has passed before the trial, the accused substantially understands the evidence to be given and the case to be made against him at the trial. To follow this practice may be inconvenient in some cases, and may cause some further expenditure of time; but such a procedure is more in consonance with that scrupulous care of the accused's interest which has distinguished the administration of justice in our criminal courts, and therefore it is better to adopt it. No injustice will be caused by permitting the exception mentioned."[1]

Two or three years before the Lee Kun case, the Nova Scotia Supreme Court had come to a similar conclusion[2]:

> "A prisoner who is ignorant of the language in which trial proceedings are conducted has no inherent right to be furnished with a literal translation of all that takes place at the trial; when the substance of the evidence in chief of a witness called on behalf of the prisoner is explained to him, the omission to explain to him in like manner what the witness said on cross-examination is not a ground for

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1. R. v Lee Kun, supra, p. 301.
2. R. v Sylvester, et al, (1912) 1 D.L.R. 186.

> quashing a conviction, the prisoner *having been represented by counsel*[1] and having suffered no prejudice by the omission."

In this case there was a persuasive dissent by Mr. Justice Graham who argued that just as it was impossible for an accused in a criminal case to waive through counsel the right to be physically present at trial, there was no way to waive the right to be intellectually present by understanding the proceedings[2]. We quote the following passage from this dissent:

> "To say that the deaf man or the foreigner who does not understand the language of the proceedings has not the inherent right to have them made intelligible to him is to say that the privilege of being present during his trial and the privilege of hearing and cross-examining witnesses against him was a mere form and that the common law was satisfied to have the letter of its requirement complied with while its spirit and substance went unfulfilled."[3]

But M. Justice Graham's dissent, with which the undersigned agrees, does not seem to have found any resonance in Canada. In 1946 the Court of Appeal of British Columbia in the case of *R. v Prince*[4] followed literally the *Lee Kun* decision. The court held:

> "A new trial will not be ordered on the ground that the evidence of accused, an illiterate

1. Italics ours.
2. *R. v Sylvester*, *supra*, pp. 190 *et seq.*.
3. *Id.*, p. 198.
4. [1946] 1 D.L.R. 659, also reported at [1945] 3 W.W.R. 720, 62 B.C.R. 99 and 85 C.C.C. 97.

> Indian with an imperfect knowledge of the English language, was not given through an interpreter, where the translation was dispensed with at the request of counsel for accused with the permission of the trial judge, and it appears that accused substantially understood the evidence given and suffered no prejudice."

We also draw attention to a 1902 decision of the Quebec Court of Appeal in the case of The King v Lorne[1]. In this case an English-speaking accused had been convicted of murder on evidence relayed mainly by French-speaking witnesses and before a French-speaking jury. The prisoner was defended by an attorney whose mother tongue was French. The court first seemed to adopt the point of view which was to be expressed a decade later by Graham, J., in R. v Sylvester:[2]

> "Every person who is charged with the commission of an indictable offence is entitled to be present in court during his trial; and he has the right to make a full answer in defence to the charge made against him. He may defend himself either personally or by counsel, and in the latter case, his counsel stands in his place to do and say anything which the defendant on his trial might do and say himself. Counsel for the defendant makes objections, cross-examines the witnesses for the prosecution, examines the witnesses called on the defendant's behalf, and addresses the court and the jury. When a defendant is not defended by counsel, he cross-examines the witnesses for the prosecution and addresses the jury respecting their evidence himself... but in order to do so efficiently and have the benefit of the full answer in defence to which he is entitled, it is necessary that he should understand the language in which the witnesses gave their evidence, and when he does not understand the language of the witnesses, he is entitled to

1. (1902) 11 B.R. 328.

2. (1912) D.L.R. 186 at 198.

have the evidence translated to him."[1]

But, the court added,

> " this rule does not apply in the case of a defendant defended by counsel who thoroughly understands the language used by the witnesses." [2]

Furthermore the prisoner had not asked for a mixed jury and had consented to trial by a French-speaking jury. It would thus appear that Canadian courts are willing to allow an accused to waive his right to an interpreter, particularly when he is represented by counsel. We deem this practice dangerous and contrary to a sound concept of justice.

4.26 Role of the interpreter.-

The role of the interpreter depends on the circumstances of an individual case. If the parties understand the language of the court, his role might be limited to translating the evidence of witnesses who speak a foreign tongue. His role becomes particularly significant, however, when it is one of the parties or the accused in a criminal case who does not understand the language of the court. Then, his function is to translate the entire proceedings in addition to conveying to the court the own testimony of such party.[3] The role of the interpreter is nevertheless confined to translating from one language to another. He must translate only what is actually said and must not on his own initiative draw inferences from the evidence and convey such inferences (which may be distorted) to the person for

1. R. v Sylvester et al, (1912) 1 D.L.R. p. 331.
2. Ibid..
3. R. v. Randall (1963) 38 D.L.R. (2d) 624 (N.B.C.A.)

whom he must translate. In a case in which an interpreter induced an accused to plead guilty as a result of such erroneous inference, a new trial was ordered because the accused could not be deemed to have wanted to plead guilty.[1] The court uttered the following words of caution to magistrates confronted with similar situations:

> ". . . There ought to be the very greatest care taken to ascertain that the accused understands before a plea of guilty is accepted. Particularly is this the case when it is apparent, as it must have been here, that the interpreter was having considerable conversation with the accused and that the interpreter might be making inferences of his own instead of translating literally everything that was said. Indeed, the interpreter should be instructed to tell the Magistrate exactly what he himself has said to the accused and to interpret each answer separately and exactly as it was given so that the Magistrate would hear in English absolutely everything that was asked and said and so make his own inferences and not risk the possibility of having merely the interpreter's inferences reported to him. Indeed, in such a case, wherever there is the slightest possibility of misunderstanding it would be far safer and far more in accordance with the fairness demanded in judicial proceedings to enter a plea of not guilty and let the prosecution prove its case which, of course, it always comes prepared to do. There could have been no great amount of evidence to be taken in any case. Whatever may be the duty of a prosecuting policeman it is not the Magistrate's first duty to get a quick conviction. Rather it is his duty to see that absolute fairness is observed between the Crown and the accused and, if the accused must be convicted, that his conviction is made only after he is plainly shewn to be guilty beyond all reasonable doubt."[2]

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1. R. v Mlaker, (1923) 40 C.C.C. 287.
2. Id., p. 297.

One of the reasons great care should be taken not to permit interpreters to exceed the role of translation is the propensity which all practising attorneys have observed and some of them to provide free legal advice to an accused with whom they sympathize. In 1965 the Quebec Court of Appeal ordered a new trial in the case of a prisoner who had pleaded guilty on the advice of his interpreter.[1]

4.27 Qualifications of interpreters.-

Obviously it is essential that interpreters be well-qualified in the various languages in which they work and also be schooled in their exact duties before the court. At the present time there is no a single jurisdiction in Canada which provides for the training and qualifying of interpreters. In fact, at the moment the only academic training in interpreting - as dintinguished from written translation - is given by the Université de Montréal.[2] But there are no training schools for court interpreters as such. While official stenographers are required to pass stiff examinations set by the Bar Associations or the courts, literally anyone can set himself up as a court interpreter! There is no such thing as certified court interpreters. The competence of interpreters is decided by the trial judge in each case.[3] It is hard to imagine any person less able than a trial judge to determine

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1. Eltore v. R. [1965] B.R. 432.
2. cf. Annex III-A to Chapter III for details of the curriculum.
3. R. v. Walker, (1911) C.C.C. 77, and particularly at 105; and R. v. Meceklette, Supra.

the knowledge which the proposed interpreter has of a foreign language or even of the court's language.

While the present system may be justified in certain areas and for languages which are particularly rarely used, it is nevertheless highly dangerous to make the property, life or limb of an individual hinge on such haphazard methods. Furthermore, the interpreter is not even required to translate every word of what is said: it is sufficient that he fully, faithfully and accurately conveys the gist of substance of what is said and he may omit irrelevant details.[1] The sole judge of what is relevant is the interpreter himself. A more questionable method of rendering justice is hard to conceive. The courts themselves show an awareness of the problem they are faced with, and particularly of the incompetence of some interpreters. As early as 1903, the Supreme Court of British Columbia remarked[2]:

> "In dealing with Indians and Chinese in our Province who have to have all their evidence filtered through an interpreter, who is seldom acquainted with the niceties of the language into which he interprets the native tongue, one has to take what is the actual purport of the statement without criticising the terms in which it is couched."

The incredible amateurishness of the present system is well illustrated by the recent case of Nishi v. M.N.R.[3] before the

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1. R. v. Sylvester, supra, and R. v. Bogh Singh (1913) 12 D.L.R. 626 (B.C.C.A.).
2. R. v. Louie, (1903) 7 C.C.C. 347 at 354.
3. (1963) 31 Tax ABC/220.

Tax Appeal Board. The appellant was a Japanese who hardly knew any English. The Government produced a totally unsatisfactory interpreter who had to be replaced by appellant's own daughter-in-law. Although she was hardly an unbiased officer of the court, respondent's counsel did not object. In his judgment, the Board indicated its suspicion that the translation had been inadequate, but stated that it had to take the evidence as presented.[1] One may well wonder how justice can be rendered in such circumstances and why the Board did not act to correct the situation proprio motu. As will be seen in the next section, dissatisfaction with the qualifications of interpreters is a common phenomenon in legal circles all over Canada.

4.28 The use of interpreters in Canadian court proceedings.-

Because of the absence of adequate legislative regulation of the profession of interpreters and the total lack of reliable information on the practices of Canadian courts in this field, we conducted in the late summer of 1964 an informal survey among members of the judiciary and bar of all provinces and territories and backed it up with a later survey among all the chief justices. In addition we consulted directly with some interpreters who work in Montreal and with officials of the Université de Montréal. While we do not claim any scientific accuracy for the results of our research, nor that it is in any way complete, our findings are supported by sufficient evidence to be highly significant. The replies from widely separated respondents who had not communicated with one another were sufficiently consistent with one another to show general patterns. On the whole, we found the Canadian system of interpretations to be weak, improvised and likely to lead to miscarriages of justice.

1. Nishi v. M.N.R. supra, at p.222

Our findings are summarized for each province and territory in the next sub-paragraphs:

(a) Alberta.- Our informal poll of judges and practitioners disclosed that there were varying practices as to the conduct of proceeding in which a foreign accused was involved. The amount of the proceedings which is translated seems to depend on counsel for the accused who may waive, or is deemed to waive, the right to interpretation. Nevertheless, some judges stated that all the evidence would be translated. This is a situation which we found reflected in all provinces. The right to waive interpretation was discussed in 4.25[1]. It was pointed out to us that interpretation was not frequently required from French to English and that in most cases it would be from Ukrainian or other European languages. Some replies pointed to a difficulty of finding competent interpreters. One reply revealed that in some lower courts, when all the parties and their attorneys as well as the magistrate were French-speaking, French would be used in the court proceedings.[2] These were cases in which no stenographic record was taken and which consequently could not be appealed. Court stenographers in Alberta as well as in all provinces but Quebec only know English and could not take down a case conducted in French. In a letter dated September 3, 1965 to the undersigned, Chief Justice C.C. McLaurin wrote:

> "Singularly enough, we have very little occasion to use interpreters. I never recall the need of an interpreter in the French language in twenty-three years on the Bench. Occasionally we require an Indian interpreter in the Cree language, occasionally an Italian, and perhaps most frequently Ukrainian. However, in the

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1. cf. also 4.29.
2. According to the 1961 census the highest proportion (cont'd next p.)

homogeneous area of Southern Alberta, new Canadians are being readily assimilated, so we are really wholly free from linguistic problems.

Since dictating the above I have been informed by our Clerk that they have no list of interpreters, which means that when an interpreter is required the lawyers involved secure one, without requiring any intercession on the part of the Clerk's office."

(b) British Columbia.- Our survey of British Columbia indicated that the amount of interpretation depended on counsel for the accused, although some replies stated that all the evidence would be translated. It was stressed that French was only one of many languages which might require interpretation and that, furthermore, the need seemed to occur more in the lower jurisdiction, since persons who do not know English are generally recent arrivals whose dealings with the courts of the Province are relatively minor. We found this situation reflected in practically all the Provinces. Chief Justice J. O. Wilson of the Supreme Court of British Columbia, in a letter dated September 1, 1965, advised as follows:

"These people have no official standing in the Courts, they are known to be competent translators who are available when required. Frequently a litigant's lawyer will bring his own interpreter and, if no objection is raised by opposing counsel, that interpreter is used.

It may interest your Commission to know that in the twenty-six years I have spent on the bench of this province I cannot remember one instance in which a French interpreter was required. This is simply explained. The only settlement of Canadian citizens from Quebec ever established here was Maillardville, actually a part of New Westminster. These good people were a very small island in a sea of English speaking Canadians and they all speak English. Since the time of Maillardville very few people have come to British Columbia from Quebec and there has never been any substantial immigration from France into British Columbia.

2.(cont'd from previous page)of person stating that French was their mother tongue were found in census division of Edmonton (15,243 or 3.7%), St-Paul Bonnyville (8,564 or 18.1%) Arthabaska (1,720 or 3.8%) Edson (735 or 3.8%) and Grande Prairie-Peace River (7,535 or9.8%)

> Most of the interpretation I have listened to has been of Chinese, Japanese and native Indian languages. The need for it is on the decline. Many European immigrants come here equipped with English, the Orientals here can now, almost all of them, speak English as can about ninety-five per cent of our native Indians."

He enclosed with his letter a list supplied by the Registrar of the British Columbia Supreme Court of interpreters ordinarily used by the Court. It listed interpreters of twenty-seven different languages including French. Some of them were listed as being able to interpret two or more languages.

(c) Manitoba.- The practice in Manitoba varies from translating only the charge or information to interpreting the entire case, although here too there was an indication that the evidence would not be interpreted if the accused was represented by counsel. Some respondents stressed that Ukrainian was heard more often than French and that French was only one of many foreign languages which might require interpretation. As in Alberta, New Brunswick and Ontario, some judges pointed out that French was used de facto in some lower courts when all the participants and their lawyers were French-speaking. Mr. Justice Alfred M. Monnin, on August 30, 1965, replied on behalf of his Court as follows:

> "Nous avons, au palais de justice, un huissier qui fait aussi dela traduction français à anglais, et un autre qui en fait de 4 à 5 langues européennes, sauf le français. C'est surtout dans la cour de magistrat que leurs services sont requis. L'huissier, traducteur français-anglais, n'est pas compétent et les avocats franco-manitobains lorsqu'ils ont besoin d'interprète, font presque toujours assermenter un de leurs étudiants en droit ou un ami compétent.
>
> Réellement il n'y a pas de problèmes."

(d) New Brunswick.- From the replies received we elicited that there is a great deal of dissatisfaction with language use before the New Brunswick courts. The practicesof interpretation vary from translating the entire trial to interpreting parts of it or only the charge and sentence, particularly when the accused has counsel. We were advised by most of our correspondents that in some jurisdictions, where all the parties and the magistrates were French-speaking, the entire case would be conducted in that language although the record would be entered in English. Some pointed out that there were cases where counsel had been permitted to address all-Acadian juries in French, at least when such address did not have to be taken down in writing by the court stenographer. Obviously, the difficulty of permitting the conduct of a case in French when all court officials are English is that it precludes the parties from going to appeal, since the Court of Appeal will only look at a transcript of a trial. Justice can only be conducted in two languages if it can also be recorded in these languages and if the Court of Appeal is able to understand them. On September 2, 1965, Chief Justice G. F. G. Bridges of the New Brunswick Supreme Court wrote us:

> "I may say that we have in this province no official interpreters. When an interpreter is required some individual with no connection with the Court is called in to do so. The Judge always makes certain that such person is acceptable to all concerned."

(e) Newfoundland.- The practices of Newfoundland courts appear to be similar to those of other provinces. There seem to be very few cases requiring interpretation. When interpreters are needed they seem to be found among professors at Memorial University. For translation from or into Eskimo, resort is had to Moravian missionaries.

(f) Northwest Territories. - Mr. Justice J. H. Sissons of the Territorial Court wrote us as follows on September 20th, 1965:

> " This Court is pretty close to the people and has no serious problems in dealing with persons who do not speak the official language.
>
> We have no list of interpreters who do translation work in the Territorial Court of the Northwest Territories.
>
> We use many interpreters in our Court, particularly for the Eskimos and Indians when on Circuit. We make use of local interpreters from the area in which the Court is sitting. There are a number of Eskimo and Indian dialects and it is necessary to have local interpreters. We have little difficulty in finding local interpreters. These are appointed by the Court, sworn, and paid by the Department on a per diem basis. We frequently have two interpreters, one for the Court, and one for the accused. This interpreter assists the accused and is also a check on the other interpreter.
>
> We also use interpreters for many New Canadians and others who have not an adequate knowledge of English. In these cases we also use local interpreters."

We also received a reply from Judge P. B. Parker, of the Police Magistrate's Court in Yellowknife. In his letter dated September 23rd, 1965, Judge Parker confirmed the information provided by Mr. Justice Sissons:

> " The language customarily used in Courts of the Northwest Territories is the English language. The greatest requirement for translation is interpretation of the Eskimo language and the various Indian languages and dialects into English. Due to the variety in the languages

> used at different points, a local person is often employed to act as interpreter and is paid as such by the Court."

Annexed to Judge Parker's letter was a list, by Settlements, of persons who acted as interpreters at court hearings of the Police Magistrate's Court and all Justices of the Peace (summary conviction) Courts in the Northwest Territories during the calendar year 1964. A total of sixty-one interpreters acted in two hundred and fifty-five cases. The detailed breakdown shows that only one of these cases involved interpretation from French. The list can be summarized as follows:

Language	Number of Interpreters	Total cases
Eskimo	19	175
Indian	41	79
Others (French)	1	1
Total:	61	255

(g) Nova Scotia:- Chief Justice J. L. Ilsley of the Supreme Court of Nova Scotia, in a letter dated August 31st, 1965 stated that the practice in his province was the same as elsewhere:

> "...is so far as I know or can find no official list of interpreters who do translation work in the Courts in Nova Scotia. Interpreters, when necessary, are selected by the presiding Judge and sworn, and there is usually agreement by counsel as to the interpreter selected. The selection of interpreters is on an ad hoc basis."

We received the following comments from Mr. T. H. Coffin in a letter dated November 8, 1965:

> " If a witness does not understand English he may testify in his own language with which he is familiar. In practice these are the steps taken:
>
> 1. The following oath is put to an interpreter:
>
> ' You shall well and truly interpret to ... a witness here produced, on behalf of ... in the suit of ... against ... the questions and demands made by the court to the said ... and his answers made to them. So help you God.'
>
> 2. Counsel examining the witness phrases the question in English.
>
> 3. The same question is repeated to the witness in his own language.
>
> 4. The witness replies in his own language.
>
> 5. The interpreter repeats the answer in English.
>
> The question as first asked by counsel and the answer as given by the interpreter are recorded by the Court Reporter.
>
> This practice applies to all the courts ...
>
> There is no distinction in this practice between civil and criminal cases, and an accused in a criminal trial may give his testimony through an interpreter. The interpreter's version of the testimony is in fact regarded as the official record.
>
> The expense in civil cases is borne by the unsuccessful party unless otherwise ordered for particular reasons and in criminal cases is borne by the Crown. We know of no change in this practice if translation from French is involved."

The general practices seem to be the same as in other provinces. Much seems to depend on the counsel. One practitioner pointed out

that some courts seem reluctant to allow interpretation when requested by French-speaking Acadians because they suspect them of knowing English much better than they "pretend". This practitioner indicated that injustices often resulted from this judicial prejudice since a person might be able to speak some English without being able to understand the language fully or to think in it. He felt that no one should be required to testify in a language he did not fully master. This seems a sound opinion to the undersigned.

(h) Ontario.- The general practices of Ontario courts as to the amount of interpretation are the same as in other provinces. Several of our sources indicated that there was a widespread practice in the lower Division Courts in districts such as L'Orignal, Ottawa, Sudbury, North Bay, Cochrane, Kenora and Sault Ste-Marie, where there are a lot of French-speaking people, to allow all proceedings to take place in that language when all concerned spoke it and the case was not appealable.[1] Some of our respondents complained of the difficulty of obtaining competent interpreters or of the reluctance of some judges to allow interpretation when the feel that the party requesting it has some understanding of English. Some practitioners also stated that they had witnessed lower court judges try a foreign accused who did not understand the proceedings and had the assistance of neither counsel nor interpreter.

On September 10, 1965, Chief Justice G. A. Gale of the Ontario Supreme Court forwarded to us a list of persons who in the past had volunteered or been used as interpreters in the Magistrates'

1. For evidence that many Ontario counties have a French population varying from 22.9% to 82.6%, cf. 4.40.

Courts in Metropolitan Toronto. The list covered thirty-four languages including French. The following remark of Inspector Shaddock prefacing his list is illuminating:

> "It is not known whether they are all competent or even whether they are all available now or not as only a few of them are tried and proven and this group are marked with an asterisk. The more frequently used also interpret in the high courts."

(i) Prince Edward Island.- There appears to be little need for interpretation in this province. One judge wrote us:

> "A fairly large percentage of the accused here are French but they all speak English and the situation does not arise."

Chief Justice Thane A. Campbell of the Supreme Court of Prince Edward Island wrote us on September 3, 1965:

> "Practically all the residents of the Province who are called as witnesses speak English, and only occasions on which interpreters may be required are those where witnesses from outside the Province are called to testify. I think the only available interpreter who has already served in that capacity is Mr. Leo Blacquiere, Registrar of Deeds, Summerside."

The Chief Justice listed as available French interpreters a court official, a lawyer and a college professor.

(j) Quebec.- The situation in Quebec is similar to that in the other Provinces. In a very large number of cases French and English are used intermittently depending on the language of a particular witness or the inclination of the attorney. Most lawyers, particularly in the Montreal area, can switch from French to English or back without too much difficulty. The bilingualism of a large segment of the Bar has simplified what could otherwise become a gigantic problem since most lawyers are willing to waive the right to an interpreter for their client when they themselves understand the language of the proceedings. But, subject to these remarks, there is no difference between the situation in Quebec and in the other Provinces. Quebec law does not regulate the use or qualification of interpreters, and the manner of picking interpreters is the same. Some interpreters have an established reputation and are constantly seen around the

courts in Montreal. But neither the undersigned nor several colleagues he has consulted have ever seen a trial judge conduct, or a lawyer request, an investigation into the qualifications of a person proposed as an interpreter in a particular case. Confidential conversations with a number of the more active and better known interpreters in Montreal have disclosed problems which may not be peculiar to the Canadian Metropolis. For instance, the tariff of remuneration for interpreters is too low and some lawyers object to paying more than the amount fixed by the tariff. Some interpreters have begun organizing to obtain an increase in their remuneration. At the present time there is an old tariff providing for $2.50 for half a day of interpreting, although the Quebec Department of Justice in criminal cases will allow $5.00 per half day.[1] It is felt that a special school of court interpreters should be created to train prospective interpreters, not only in translation, but also in court procedure. Indeed, as we have seen, interpreters are not adverse to acting as gratuitous legal advisers. Frequently the accused will ask the interpreter what to answer to the question of the court as to his guilt or innocence. Or the interpreter will take it upon himself to advise the accused on the strategy the interpreter deems appropriate. In other cases the interpreter misinterprets the court's decision. One example cited was the judge's order that the accused be freed upon depositing a bail of $100.00. This was translated to the accused by telling him that he had "to pay $100.00 to the court".

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1. We have not been able to find this old tariff, but order-in-council No. 3261 of 1937 published in the Quebec Official Gazette of that year, Vol. 69, p. 4793 (Tarif des Greffiers de la Paix et du Greffier des Juges de Paix) provides (in s. 27) that interpreters be paid $1.50 "par séance" (per sitting).

In another case the interpreter simply told the accused to "go home". Because of the inadequate remuneration in criminal cases, interpreters shy away from accepting cases which will last several days or several weeks, since they prefer short cases which enable them to accumulate several fees for the same half day. Our interviewees stressed the importance of familiarity with local idioms and the linguistic difficulty of conveying the colloquil usage of one language into that of another. There seems to be agreement on the need for training, official screening and recognition, and adequate remuneration. Furthermore, some interpreters were critical of the administration of justice in dealing with the language problem. Some court clerk will ask a witness or the accused whether he speaks French or English and be satisfied with a "yes" or "no" without inquiring any further, although it has happened that a party has claimed to understand English when he barely knew fifty words of the language. In cases of doubt, some verification should be made. Some interpreters also feel that courts tend to dismiss too lightly an accused's complaint that he does not understand the charge against him and do not call for an interpreter, although it would seem evidently necessary.

(k) Saskatchewan.- The court practices in Saskatchewan appear to be the same as everywhere else. One judge pointed out that there was a decreasing use of interpretation and that at the present time mostly Indian languages were translated. One case was pointed out to us in which a District Court had refused an interpreter to a Ukrainian born in Canada on the ground that he should have known English by this time. In another case a judge was described as having refused an interpreter because the party had no business coming to court if he did not know English. Although there was some indication that French was sometimes used in the lower courts, many respondents said that Ukrainian and other languages were more of a problem than French.

On August 30, 1965, Chief Justice A. H. Bench, of the Court of Queen's Bench of Saskatchewan wrote us that the Court of this Province had no list of official interpreters and that the usual practice is for counsel to find and propose to the court some person who is proficient in the language in question and in the official language, and who is impartial between the parties.

(l) Yukon Territory.- On August 30, 1965, the Clerk of the Territorial Court of the Yukon Territory in Whitehorse, stated:

> "We do not have, in this Court, any regularly employed interpreters nor do we maintain a list of those persons who are occasionally called upon for this service. Need for interpreters is most infrequent. Our population is predominantly English-speaking and any need for interpreters arises only in respect of a few native Indians and, occasionally, with respect to newly-arrived Central European immigrants."

4.29 Interpreters in trials by mixed jury.-

We have noted[1] the absence of any provision governing the conduct of a trial before a criminal mixed jury in Manitoba. If the accused elects to be tried by jury composed of six French-speaking and six English-speaking citizens, must the proceedings also be conducted in both languages? What is the practice of Canadian courts? The lack of reported jurisprudence on the last question would require a detailed survey which we did not have the time to carry out. Jurisprudence on juries de medietate linguae in other jurisdictions would not be of much assistance because, as we will see, the right to a jury of this type was limited to having half a jury composed of foreigners although these need not speak the same language as the accused.[2] The right to a jury de medietate linguae was that to a jury of which half the members were foreigners, but not necessarily of one's own country. Nor were proceedings before such jury conducted in a foreign language. In Quebec, we have only found two decisions dealing with the use of language and the role of interpreters in trials by mixed jury, both of them from the Supreme Court. The first one, was in the case of Veuillette v. R.[3]. The appellant, after being accused of murder, stated through counsel that he was French and elected to be tried by mixed jury. The six French-speaking jurors stated to the court that they under-

1. In 4.21.
2. cf. 5.03, 5.08 and 5.10.
3. (1919) 58 S.C.R. 414, affirming (1919) 28 B.R. 36.

stood and spoke both languages. Thereafter, the trial was conducted in English. One ground of appeal was that the trial judge had not summed up the case to the jury in French. On the ground that this had not produced a "substantial wrong or miscarriage of justice", the appeal was dismissed by the Supreme Court, with one dissent. In their opinions, various Justices of the Supreme Court considered the language right of an accused who is tried before a mixed jury. In the Court of Appeal, Chief Justice Cross, who had dissented from the majority of his Bench, had held that proceedings in such a case should be conducted in both languages to protect the rights of the accused. Mr. Justice Idington in the Supreme Court felt, on the contrary, that such insistance on conducting the case in two languages might jeopardize the rights of the accused:

> "There is no other class of criminal trials which produces such a strain upon the minds of those concerned as does a trial for murder. There would inevitably result, from a repetition in two languages of all that was expressed, a prolongation of the trial tending to fatigue and inattention on the part of the jurors and possibly a confusion of thought which tiresome reiteration is apt to produce.
>
> The just rights of an innocent man might be needlessly jeopardized in such a case.

> The statutory right given an accused and now in question had originally a deeper import than the mere right to the use of the two languages. The latter right in substance is recognized in the due and proper administration of justice wherever and whenever, and so far as necessary; though not carried to the extent that the law in question does relative to the selection of a jury."[1]

He then added:

> "The case was not one that, so far as we are informed, needed anything but the ordinary conversational skill in use of language to apprehend what was said.
>
> Cases are conceivable in which terms might be used calling for more than that degree of skill. Then, of course, care must be taken that each set of jurors fully understands the import of what is said.
>
> In cases of trial for murder, where there is a possible alternative, of the crime being reduced to one of manslaughter, it frequently happens that nice distinctions of law need to be observed and in explaining such distinctions it might be well for a judge charging a jury to make such distinctions clearly understood by using both languages, lest a juror might not understand same when addressed in another than his mother tongue, even if he had acquired the facility of carrying on an ordinary conversation in another language. But in a murder trial such as this happened to be where it was inevitably either murder or nothing, all the jurors had to understand was the statement of plain ordinary every-day facts."[2]

In the view of Mr. Justice Idington it was sufficient for the members of the mixed jury to have a "conversational skill" in the language used and, in fact, repeating in two languages might

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1. (1919) 58 S.C.R. 414 at 416-17.
2. Id., p. 418.

even produce risks for the accused. Mr. Justice Anglin felt that an accused electing to be tried by a mixed jury was entitled to have the case conducted in both languages, for otherwise the right to a mixed jury "would be purely sentimental and no right real and substantial in character would be conferred by it".[1] But the learned judge felt that there was considerable evidence in the record to indicate a tacit consent by the accused to the trial being conducted entirely in English. He pointed out that the accused himself had testified entirely in English.[2]

Mr. Justice Brodeur dissented on the following grounds:

> "Maintenant, quelle est l'étendue du droit qui était conféré aux prévenus?
>
> On a prétendu que ce droit ne consistait que dans le choix des jurés et ne comportait pas l'obligation pour la cour de voir à ce que toutes les procédures soient conduites dans les deux langues afin d'être bien comprises par tous les membres du jury.
>
> Ce serait, suivant moi, un droit bien illusoire si, malgré le droit qu'aurait un anglais, par exemple, de choisir un jury mixed, il était permis à la couronne de faire entendre les témoins en langue française et de ne pas traduire leurs témoignages en anglais de manière à ce que la teneur de ces témoignages fût comprise par les jurés de langue anglaise. Cela constituerait un grave déni de justice.
>
> Il en serait de même pour le résumé (charge) du juge. Ce dernier devrait voir à ce que son allocution soit comprise de tout le jury.

1. (1919) 58 S.C.R., 414 at p. 419
2. Id., p. 420.

> Il est vrai que la loi est silencieuse sur la manière dont une cause devra être conduite devant un jury mixte. Mais je ne veux pas de meilleure interprétation de la loi que cette pratique, constamment suivie depuis plus de cent cinquante ans, que dans le cas de jury mixte les dépositions des témoins sont traduites dans les deux langues et le résumé du juge est également fait ou traduit en anglais et en français."[1]

Nor did Brodeur, J. believe that an implicit waiver was sufficient:

> "Mais on dit: Il n'y a pas eu de protestation dans la cause actuelle quand le juge a omis de parler en français, le prisonnier a donné son témoignage en anglais, son avocat n'a parlé qu'en anglais quand il a fait son allocution aux jurés, et, de plus, on a demandé aux jurés français s'ils connaissaient l'anglais et ils ont répondu que oui.
>
> Toutes ces circonstances ne sauraient prouver qu'il y a eu acquiescement formel à cette illégalité. Je me demande même si dans un procès pour meurtre un acquiescement formel serait suffisant. La loi criminelle exige que dans les procès qui peuvent entraîner la peine capitale toutes les précautions doivent être prises pour que toutes les règles de la procédure soient suivies avec la plus grande rigueur. (Russel on Crimes, vol. 3, p. 2156.)
>
> Nous avons au dossier une preuve énonçant que certain juré n'avait pas une connaissance suffisante de l'anglais pour comprendre tout ce qui a été dit par le juge et les témoins.
>
> Nous avons également au dossier un fait qui ne porte pas, il est vrai, sur la question que je suis à examiner, mais qui démontre bien l'importance d'avoir tous les témoignages bien traduits. L'un des témoins donne son témoignage en anglais et rapporte une conversation de l'accusé qui était cependant tenue en français. On lui demande de répéter en français le

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1. Id., pp. 424-25.

texte de cette conversation. Il y a une variante importante. On la signale au témoin et il est obligé de dire:-

> 'The way they rattle me up is in French and English. I have a little of both and all the words are mixed up.'

Ce témoignage est des plus importants dans la cause. Nous voyons que la version anglaise donnée par le témoin de cette conversation incrimine bien plus l'accusé que les mots dont ce dernier se serait servi d'après ce même témoin quand il rapporte le texte français. Ce texte français ne paraît pas avoit été traduit en anglais aux jurés et nous trouvons dans le dossier le fait que certains jurés ne comprenaient pas du tout le français.

Tout cela démontre l'importance qu'il y a de conduire la cause dans les deux langues et le danger qu'il y a de ne pas le faire.

Pour maintenir le verdict, l'intimé se base aussi sur le fait que l'avocat de la défense n'a pas parlé aux jurés en français.

L'accusé était évidemment un adolescent bien pauvre, sans famille et sans protection. Il a trouvé dans son jeune défenseur un homme bien dévoué qui a évidemment entrepris cette cause sans l'espoir de toucher un sou d'honoraire. Mais, comme cet avocat le dit lui-même dans son factum

> ' he was a very young member of the bar, and had not then the advantage of the experience which he has since acquired, was lead into the error of following the action of Crown counsel and of the presiding judge.' "[1]

We saw in the preceding section that the practice of Canadian courts is to permit counsel to waive implicitly or explicitly the right to interpretation. While this may result from an understandable concern to speed proceedings, it appears to the undersigned to deprive the accused of the full right to understand the evidence against him and to make a full defence. How can a party who is ignorant of what goes on instruct counsel properly?

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1. Id., pp. 425, 426 and 427.

The famous Quebec jurist, Mr. Justice Mignault agreed with his dissenting brother but did not deem the injustice to constitute a "substantial wrong or miscarriage" permitting a new trial:

> "Revenant maintenant à la disposition de la loi 27-28 Vict. ch. 41, il est clair que cette disposition serait illusoire si, dans un procès instruit devant un jury mixte, les témoignages n'étaient pas traduits du français en anglais, et réciproquement, et si l'adresse du juge présidant le procès n'était pas faite, du moins quant à ses parties essentielles, dans ces deux langues. Telle a toujours été la pratique en la province de Québec, et le savant conseil de l'intimé devant nous, Mtre. Gaboury, en réponse à une question que je lui ai posée, a admis que cette pratique était aussi suivie dans le district de Pontiac. Je suis donc d'opinion que le prisonnier qui demande un jury mixte a le droit d'avoir un procès instruit dans les deux langues, française et anglaise, ce qui comprend bien l'adresse du juge au jury.
>
> On invoque le fait que dans cette cause les jurés de langue française ont déclaré lors de leur assermentation qu'ils comprenaient l'anglais, que lorsque le premier témoin a témoigné en anglais, les jurés de langue française, interrogés par le juge, ont répondu qu'ils avaient compris son témoignage, que le défenseur du prisonnier avait parlé l'anglais dans son plaidoyer au jury, et que le prisonnier lui-même avait rendu son témoignage en anglais. De là on conclut qu'il y a eu acquiescement du prisonnier à l'instruction du procès dans la langue anglaise.
>
> J'hésiterais beaucoup à conclure du silence du prisonnier, ou même du fait qu'il a donné son témoignage en anglais, qu'il a renoncé à un droit indubitable qui découle de son choix d'un jury mixed, celui de faire instruire son procès dans les deux langues. Mais puisje dire qu'il y a dans cette cause ce que la question soumise appelle "substantial wrong or miscarriage," sans quoi, aux termes de l'article 1019 du Code Criminel, un nouveau procès ne peut être ordonné?"[1]

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1. Id., pp. 430-31.

> " ... Je suis bien d'avis qu'il a été fait quelque chose de non conforme à la loi pendant le procès, c'est-à-dire que l'accusé avait droit à ce que le procès fût instruit dans les deux langues, et à ce que l'adresse du juge au jury fût faite ou traduite, au moins dans ses parties essentielles, dans les deux langues, mais puisque le Code Criminel exige en outre que je sois d'opinion qu'il en est résulté un tort réel ou un déni de justice, je ne puis, dans toutes les circonstances de cette cause, aller jusque là.
>
> Je dois donc, et non sans regret, concourir dans la décision de la cour d'appel sur cette première question."[1]

The point came up again, but indirectly, before the Supreme Court in Reference re Regina v. Coffin[2]. One ground of appeal was that Coffin, having been tried before a mixed jury, the evidence had been translated from one language into the other; the charge had been in both languages and counsel for the prosecution and defence addressed the jury in both languages, there being some differences between the two versions of each address and each charge. This ground was dismissed by the Supreme Court. Expressing the court's opinion, Mr. Justice Kellock stated:

> " The appellant further calls attention to the fact that the trial took place before a mixed jury, the evidence being translated from one language into the other; that the learned trial judge charged the jury in both languages, and that one counsel for the prosecution as well as one for the defence addressed the jury in one language while his associate in each case addressed the jury in the other. It is contended that because of differences between the

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1. Id., pp. 431-32.
2. [1956] S.C.R. 191.

> addresses in one language and the other and between the charges delivered by the learned judge, the result is that the appellant was really tried by two groups of jurymen composed of six men each. It is also contended that s. 944 of the Criminal Code requires that the jury be addressed by one counsel only on each side.
>
> When it is remembered (as we were told by Crown counsel without contradiction) that the practice followed with respect to translation, the charge and the addresses has been the invariable practice in the Province of Quebec since 1892 at least, when the Code was first enacted, and that during all of that time s. 944 has been in its present form, the contention, in so far as it is based on that section, cannot, in my opinion, succeed."[1]
>
> " ... In my opinion, neither the differences to which we were referred as between the address on behalf of the prosecution in the one language and the other, nor the charges, were of a nature to call for the interference of this Court in the grant of a new trial."[2]

If we can summarize the law on the basis of the Supreme Court's decisions, it would appear that in a mixed jury trial the accused is entitled to demand that all the evidence be translated in both languages; counsel can address the jury in both languages; and the judge can charge the jury in both languages. Minor differences between the French and the English versions of these addresses and charges will not invalidate the trial. Furthermore, the accused might waive explicitly or tacitly his right to having the trial so conducted in two languages. We have already indicated

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1. Reference re Regina v. Coffin [1956] S.C.R. 191, at p. 214.
2. Id., p. 215.

that, although this is the weight of the jurisprudence, we consider the dissenting opinion of Mr. Justice Brodeur in Veuillette v. R. that such right cannot really be waived to be better. In addition, if this is the law in Quebec, we do not see how it can be different for mixed criminal trials in Manitoba. But we reiterate our inability to find any relevant Manitoba decision on this point. It is thus evident that trials before a mixed jury can create important problems of interpretation which render essential the availability of competent interpreters.

4.30 Legal problems resulting from interpreted evidence.-

Some courts appear to attribute less weight to translated evidence than to testimony in the court's own language. For instance, in R. v. Ciarlo[1] the Quebec Court of Appeal considered a case in which a witness, who spoke only French, gave evidence in that language at preliminary inquiry where it was translated into English and taken down by the translator. At trial, the defence counsel moved to read the deposition of that witness to show contradictions with his evidence at trial. The trial judge denied the motion on the ground that the translated evidence could not be used to contradict the witness:

> "In order to show a contradiction between the evidence given by a witness at a preliminary inquiry and that being given by him at the trial, his deposition may be read, but such deposition should contain the witness' own words and expressions. In the present case, the evidence was given in French, but it was translated and taken down by the translator in English. The words taken down are the translator's, and what was so taken down was not explained to the witness. The meaning of the words uttered by the witness may have been entirely altered in the translation, and the witness must be contradicted by what he may have previously said himself, and not by what a translator, without verification, has made him say. The deposition, therefore, should not be used for that purpose.
>
> I consequently rule that the deposition cannot be read.

1. (1897) 6 B.R. 144.

> But the witness may be cross-examined as to any statement made by him relative to the subject-matter of the case at the preliminary inquiry and inconsistent with the evidence he has now given, and should he not admit such statement, it may then be proved by witnesses who were present and heard it."[1]

In R. v. Walebek[2], a case half a century old, the Saskatchewan Supreme Court held admissible in evidence a statement made by a foreign witness at a preliminary inquiry, condensed into English, then read back to him in his own language by the interpreter and signed by him. The accused objected that the Crown could not produce the statement without proving that the interpreter had correctly translated both the statutory warning concerning such statement and the statement itself. The objection was overruled by the trial judge who was upheld by the Saskatchewan Supreme Court. The court added that "if the accused did not understand what he signed, or the warning given, it was, of course, open to him to establish that fact, and the significance of the statement would correspondingly be weakened." [3]

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1. R. v. Ciarlo, supra.
2. (1913) 10 D.L.R. 522.
3. Id., at 523.

An analogous decision was rendered not long ago by British Columbia's Court of Appeal in R. v. Binette[1] which held that a psychiatric examination of an accused charged with being a dangerous sexual offender was not invalidated because it was conducted with the assistance of an interpreter. It was held that the Crown was not bound to prove that the interpreter had correctly interpreted during the accused's interview with the psychiatrist, particularly since there was no evidence at trial to the contrary. The gist of both these cases is that the burden of proving incorrect interpretation is on the party invoking it. But it is apparent that this is a burden which it is almost impossible to discharge. This is an additional argument for the formal training of court interpreters and their being submitted to official examinations.

On the other hand, there is no need for the interpreter to be present from the very beginning of the examination of a witness who does not speak the court's language. In R. v. Defilippi[2] the principal Crown witness was duly sworn in English, but during his examination he experienced difficulty in expressing himself and an interpreter was sworn to allow the witness to continue in Ukranian, his mother tongue. On appeal, it was objected by the accused that, because of this, the witness did not understand the nature of the oath which had been administered to him and that this was "a matter of such grave doubt that the conviction should not be

1. [1965] 3 C.C.C. 216.
2. [1932] 1 W.W.R. 545.

allowed to stand." The Alberta Supreme Court, Appellate Division, ruled that

> "... if in this case the magistrate's conduct in calling the interpreter, either in itself or coupled with the evidence given up to that point, necessarily led to the conclusion that the witness did not understand the nature of an oath, then this Court should interfere, but it is a matter of common knowledge and a matter of daily occurrence that in all Courts of law interpreters are brought into a trial to interpret for a witness at all stages of his evidence with a view to expediting the conduct of the trial without the slightest suggestion that the witness cannot understand what is being said to him and solely because he may through an interpreter give his evidence with greater ease and expedition than he would otherwise do."[1]

An interesting sidelight of the problems which can arise from the use of interpreters is to be found in the decision of the Quebec Court of Appeal in Gagnon v. R.[2] which held that where it is necessary to have an interpreter to translate the testimony of witnesses before the grand jury, the presence of such interpreter the grand jury room during the jury's deliberations will not invalidate an indictment.

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1. R. v. Defilippi, supra, at 547.
2. (1915) 24 C.C.C. 51.

D - COURT STENOGRAPHERS

4.31 The need for verbatim recording of court proceedings.-

All court proceedings which are appealable must be recorded verbatim and in full. Normally courts of appeal do not hear any new evidence and decide cases on the record of the lower court. This means that all the evidence and the judgment must be taken down as well as, within certain limits, the objections and remarks of counsel and sometimes arguments. Otherwise it is impossible to take the case to appeal if one of the parties so desires. Generally speaking, the more important types of civil and criminal cases are appealable and are fully recorded. In less significant trials, the record may contain only the charge, the names of witnesses and the decision rendered. Naturally, even in appealable cases, the parties may normally waive their right to appeal and renounce stenography. The only exception would be cases of murder in which appeals are automatic under the Criminal Code.[1] The usual practice is to record court cases by means of stenography or stenotyping. If the record is needed for appeal or for other purposes, it is then transcribed by the official stenographer. In some jurisdictions, such as the Montreal Superior Court at the present time, the lack of experienced court stenographers, has led to experiments with mechanical methods of recording under supervision of a deputy prothonotary.[2] It is too early to evaluate these experiments. However, the constant growth of judicial and

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1. s. 583A of the Criminal Code.
2. cf. "Court Reporters Resent Machines", The Montreal Star, December 15, 1965, p.3. For evidence of the merits of a mechanical system of recording evidence, see annex IV-A dealing with the use of tape recordings in Alaska courts.

and quasi-judicial proceedings and the difficulties of attracting competent court stenographers, make the mechanisation of court recording inevitable.

4.32 Court stenographers and bilingual justice.-

We have had occasion to note, particularly in 4.28 that in provinces such as Alberta, Saskatchewan, Ontario and New Brunswick, which are unilingually English, French is sometimes used in cases which need not be fully recorded. The obvious reason is that the lack of French-speaking stenographers would make it impossible to record an appealable case conducted in French thereby depriving the parties of their right to appeal. Admittedly, if interpreters are used, everything can be recorded in the court's own language, either as spoken in the presence of the court or as interpreted before it. But this is certainly not a satisfactory method in a jurisdiction where two languages can be used. In other words, it would be impractical to authorize the use of French before tribunals which do not have the means of recording such proceedings. The answer is to supply either qualified French or bilingual stenographers, or to have mechanical devices whose recordings can be then transcribed by a competent typist. If the experience of the Montreal judicial district, which is the most actively bilingual one in the country, is significant, it is clear that the problem will not be solved by human recorders and that any extension or intensification of bilingual justice will require the widespread use of mechanical recorders together with simultaneous translation perhaps. Another practical objection to

human personnel, is the necessity of immobilizing at least two stenographers for each court case, a French one and an English one. Even in Montreal, bilingual stenographers are a rarity. According to our information[1] at the beginning of December, 1965 there were 33 official stenographers employed for the Superior Court for the district of Montreal. Twenty-two of them only took down French; 11 took down English. Only one or two of these 33 stenographers could take down evidence in either language. The court of Sessions of the Peace in Montreal at the same time employed 30 stenographers: 18 French and 12 English and none bilingual.[2] The practical difficulty and the delays resulting from this dearth of stenographers were underligned by Associate Chief Justice George S. Challies at the opening of the 1965 autumn term of the Superior Court in Montreal:[3]

> "Associate Chief Justice George S. Challies complained today that the problem of courthouse stenographers had become intolerable.
>
> At the official opening of the autumn term of the Superior Court he said that in the judicial year, 1964-1965, several hundred cases were unalbe to proceed on the contested list, because of the absence of a French, or more often, an English stenographer.
>
> This also applied in the Practice Division of the Court, when cases had been blocked for the same reason. Many of these were cases involving alimentary pensions, or the custody of children.
>
> 'This is a situation which cannot and must not continue, and I urge the authorities to adopt the

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1. Interview conducted on December 13, 1965, with Mtre. Jacques Tisseur, Secretary-Treasurer of the Bar of Montreal.
2. Interview conducted on December 13, 1965 with Mr. Lucien Lavallée, Chief of the Stenographic Services in the Montreal Criminal Courts.
3. cf. "Court Steno Shortage Irks Judge", The Montreal Star, September 7, 1965.

report of the General Council of the Bar, which recommends that stenographers within the district of Montreal be made full-time employees of the province on a fair and reasonable salary, and subject to the supervision of a special officer, duly appointed.'

Chief Justice Challies said that, with the co-operation of members of the Bar, he proposed to experiment with mechanical methods of recording the evidence in an endeavor to find means of easing the stenographic problem."

4.33 The qualifications of court stenographers.-

If the Montreal judicial district can be used as an illustration, it is extremely difficult to find a competent court stenographer in any language. Under the Quebec Stenographers' Act[1] court stenographers "shall be officers of the Superior Court" and shall be examined by the Bar in each district. The Bar of Montreal holds regular examinations. Candidates are required to pass the following tests:

1. two-minute speed test - continuous text - at 120 words per minute;
2. two-minute speed test - questions and answers - at 150 words per minute;
3. two-minute speed test - questions and answers - at 175 words per minute;
4. transcription at a speed of 10 words per minute.

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1. 1964 R.S.Q., c. 30, ss. 2 and 3.

Very few candidates pass these tests successfully. In fact, if the Bar were as strict as some lawyers would want it to be, hardly any candidate would ever be admitted. It has also been found that foreign candidates seem to pass the examinations with greater ease than Canadians. On the other hand, as pointed out by Mr. Lucien Lavallée, head of the stenographic services of the Montreal Criminal Courts, court stenographers must not only know the theoretical language, but also the colloquial language spoken in the milieu in which they work including slang and frequently used foreign words. As in the case of court interpreters, there is no officially recognized training schools for court stenographers.

4.34 Conclusion: need for mechanical means.-

Since even in Montreal it appears impossible to obtain anywhere near the number of court stenographers required, the only hope for a widening of the bilingual requirements in Canadian justice, if such policy is to be pursued, lies in the widespread use of mechanical devices. Otherwise the present situation will only worsen. At the present time the only statutes specifically providing for mechanical recording in Quebec is the Mining Act[1]. The proposed Code of Procedure does not specifically permit the use of mechanical devices, but s. 324 of the draft bill stated that "depositions are taken by stenography or in such other manner as may be authorized by the Lieutenant-Governor in council". Obviously the latter words of this proposed section are designed to

1. adopted by the Legislative Assembly on March 24, 1965, Fourth Session, Twenty-Seventh Legislature, 14 Eliz. II, Bill 8, s. 292, which states: "The Mining Judge may order the evidence to be taken down in shorthand or by means of a recording machine ...".

permit the Provincial Cabinet to authorize by order-in-council methods of recording other than stenography or stenotypy which are the only ones admitted at the present time.[1] The Quebec Bar is actively considering the introduction of mechanical devices and is conducting experiments with various recorders. These experiments have been greeted with a number of public statements by official court stenographers pointing out the shortcomings and inaccuracies of the machines used. There is little doubt in the undersigned's mind that whatever weaknesses mechanical devices may display, they can all be corrected, if need be by a human assistant.

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1. Art. 345 of the present Code of Procedure.

E - ENFORCEMENT OF JUDGMENTS

4.35 Reciprocal enforcement of judgments.-

The various Provinces and Territories in Canada have legislation providing for the reciprocal enforcement of their maintenance orders and judgments. In Alberta[1], British Columbia[2], Newfoundland[3], Manitoba[4] and the Yukon[5], it is provided that any judgment or maintenance order which is not in English must be accompanied by a certified English translation. The only exception is the Northwest Territories where the Maintenance Orders (Facilities for Enforcement) Ordinance[6] permits the registration of a maintenance order from another jurisdiction in either English or French notwithstanding the fact that the same privilege is not extended by the Reciprocal Enforcement of Judgments Ordinance with respect to other judgments[7]. In view of the fact that we have come to the conclusion that French is still an official language in both the Northwest Territories and the Yukon[8], we are of the opinion that the requirement for a certified English translation of French judgments and orders in these two Territories is illegal.

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1. The Reciprocal Enforcement of Judgments Act, 1958, 7 Eliz. II, S.A., c. 33, s. 5 ; and The Reciprocal Enforcement of Maintenance Orders Act, 1959 S.A. 7 Eliz. II, c. 42, s. 12.
2. Reciprocal Enforcement of Judgments Act, 1960 R.S.B.C., c. 331, s. 6 and Reciprocal Enforcement of Maintenance Orders Act, 1960 R.S.B.C., c. 332, s. 13.
3. Reciprocal Enforcement of Judgments Act, 1960, 9 Eliz. II, S.N., c. 12, s. 6, and The Maintenance Orders Enforcement Amendment Act, 1961, 10 Eliz. II, S.N., c. 34, s. 5.
4. Reciprocal Enforcement of Judgments Act, 1961, 10 Eliz. II, S.M., c. 30, s. 6.
5. Reciprocal Enforcement of Judgments Ordinance, 1958, R.O.Y.T., c. 95, s. 4, and Reciprocal Enforcement of Maintenance Orders Ordinance, 1958 R.O.Y.T., c. 96, s. 12.
6. 1963 R.O.N.W.T., second session, c. 17, s. 3.
7. 1956 R.O.N.W.T., c. 82, s. 4.
8. cf. 4.17 (f) and (g).

In Ontario the Reciprocal Enforcement of Maintenance Orders Act[1] provides that judgments translated shall be deemed inthe English language, but the Reciprocal Enforcement of Judgments Act[2] contains nothing concerning the language.

The Quebec Reciprocal Enforcement of Maintenance Orders Act[3] contains no provision dealing with language for the obvious reason that it applies only to alimony judgments rendered in other provinces[4] which are bound to be in English, one of Quebec's official languages. At the present time, reciprocity in Quebec exists only with the following provinces: Nova Scotia, New Brunswick, Prince Edward Island, Ontario, Newfoundland and British Columbia.[5]

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1. 1960 R.S.O., c. 36, s. 11.
2. 1960 R.S.O., c. 345.
3. 1964 R.S.Q., c. 23.
4. s. 10.
5. cf. s. 10 of the statute requiring that the Act apply only to provinces designated by the Provincial Cabinet and the laws of which permit the execution in their respective territories of similar Quebec judgments. Order-in-council No. 276, published in the 1964 Quebec Official Gazette, Vol. 96, p. 6169 declares the statute to apply to Ontario, New Brunswick, Nova Scotia and Prince Edward Island; Order-in-council No. 304, published in the same volume at p. 6170, extends it to Newfoundland and order-in-council 1623, ibid., renders the statute applicable to British Columbia judgments.

CONCLUSION

4.36 Inadequacies of the Canadian system of court interpretation.- It is obvious that rendering justice in two languages is much more difficult than using one language only. But since the Constitution requires or allows both languages in all the courts created by Parliament and in all Quebec courts, we should be concerned with providing the best judicial service possible in two languages. This cannot be done, in the undersigned's opinion, unless considerable improvements are made in the training and screening of interpreters. It seems difficult to accept that interpreters, on whose competence and fidelity the property or life and limb of an individual may depend, are not given any special training and are not required to establish their qualifications by means of an official examination. If court stenographers are tested, why is this not the case with interpreters? A very close check on interpreters is indispensable particularly in view of the fact that interpreters intervene most frequently in cases where the accused is unfamiliar with Canadian justice and is not represented by counsel. As we have seen, an unskilled and well-meaning interpreter will often act as a benevolent lawyer to the person for whom he interprets, sometimes with disastrous results. We recommend that schools of interpretation be organized to train persons, not only in interpretation, but in the rights and duties of court interpreters and in court proceedings. We further recommend that whenever possible, no one who has not received such training,

and been examined and certified either by the Bar or the Bench, be permitted to interpret before courts in Canada. We further suggest that close surveillance be exercised over the activities of interpreters to prevent them from counselling the accused. We also believe that present practice of allowing interpreters in some cases to summarize evidence rather than interpreting it literally, should be abandoned. It can only lead to confusion and inaccuracies.

4.37 Recommendation that court proceedings be mechanized.-

For reasons outlined in the previous section we recommend that the present method of human recording of court proceedings be replaced by the use of mechanical devices under the supervision of a qualified court recorder who will be an officer of the court. Furthermore, the present cumbersome system of viva voce interpretation in open court should be replaced by a system of simultaneous translation which will convey every single element of the proceedings to anyone who is interested. As we will see[1] a system of simultaneous translation is used with success by the Board of Broadcast Governors, a quasi-judicial federal entity whose functions are analogous in many ways to those of a court of law.

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1. In 6.08 (h).

4.38 The question of court costs.-

The use of mechanical devices should contribute to reducing the costs of justice. At the present time, whether a transcription is needed or not, the losing party in a civil case is required to pay fairly high stenographic costs. Even if the case does not go on, court stenographers are paid for just sitting by idly in the corridor. In criminal cases the costs are normally paid by the Crown. Mechanical recording would cut costs drastically, especially in the majority of cases where no transcript is desired. On the other hand, an improved system of interpretation cannot be inaugurated without increased costs. In order to attract more qualified personnel to the profession of interpretation, better remuneration must be provided. Better hourly remuneration and increased use of interpreters, even in a simultaneous translation system, might prove to be relatively expensive and even prohibitive for some parties. This would not be too great an impediment to justice in criminal cases where the Crown traditionally picks up the bill, but might be so in civil cases. We would not go so far as to suggest that the Crown be required to pay the costs of interpretation in all civil cases as well, but we would recommend, that in those jurisdictions which are officially bilingual, and where interpretation is needed to provide bilingual justice, the interpreters be paid by the state unless the judge otherwise orders for valid reasons.

4.39 The problem of appeal.-

The conduct of bilingual justice also raises problems in appeal. If parties are going to be allowed to proceed before the courts in one or two official languages, the record must also be in those languages. Hence the members of the Court of Appeal who may eventually have to pore over the record must also be familiar with these languages. In Quebec there is no difficulty at the present time since all judges of the Court of Appeal have always been fluent in both French and English. But there is a certain lack of ease among Quebec practitioners about the bilingualism of some members of the Supreme Court bench. If the right to have a case tried in either one of Canada's official languages were to be extended to other provinces or to specific areas of certain provinces - thereby consacrating perhaps what we have seen in 4.28 to be the de facto practice in some areas of Alberta, Manitoba, New Brunswick and Ontario - then provision will have to be made for bilingual appeals. Either the courts of appeal of these provinces will have to have French-speaking members - which might not be practical except perhaps in New Brunswick - or some method will have to be devised whereby translation of the relevant parts of the record will be provided. This is obviously a highly undesirable method since a translated record is no better than the transcript of interpreted evidence. But it might be a first step. In any case, we want to stress that no thought should be given to extending the right to be tried in two languages unless we are prepared to enable the parties to have the same possibilities of appeal as parties to an entirely English case.

4.40 A blueprint for extending bilingual justice.-

If the right to be tried in either one of Canada's official languages is to be extended to other provinces than Quebec, not only will Canada have to overcome the great practical difficulties outlined in the present chapter and the inevitably resulting political turmoil, but a more or less flexible formula will have to be developed to determine the proportion of the total population which a linguistic minority must represent before it can lay claim to bilingualizing the system of justice applicable to it. In our mind, the only acceptable formula is one based on census figures of the mother tongue of the inhabitants of a given area. This may require changes in the manner of reporting the results of the census to have the figures produced correspond with the geographical outline of the various existing levels of judicial or administrative jurisdictions. Indeed, the jurisdiction of a given tribunal may be merely local (generally corresponding to municipal boundaries) or may extend over an entire district or region, and even be province-wide (as is the case with appellate tribunals).

Assuming, however, the availability of precise figures for any judicial district, it would be possible - once the percentage of population required has been agreed upon - to determine without difficulty, on the strength of the census figures provided every ten years, whether or not facilities for bilingual justice ought to be introduced in the jurisdiction. To illustrate our point, we have projected, on the basis of the 1961 census figures, what changes would have to be brought in the Canadian judicial system, if such formula were to be adopted. We have used two alternative formulas,

one based on a minimum requirement of 20% of inhabitants stating that the minority language is their mother tongue, and the other one being 30% (a figure which would more closely reflect the 28.1% of Canadians who declared that French was their mother tongue in the 1961 census). In other words, we tried to find out which jurisdictions would become officially bilingual in the event that either a 20% or a 30% minimum were required. In making the following projections, we have taken into consideration only the French and English languages, although we are well aware that in some areas of Western Canada there may be sizeable different linguistic minorities. We are also aware of the fact that the census divisions do not necessarily correspond to the common judicial divisions. Nevertheless, we believe that the following tables may be instructive and reflect the eventual geography of a national bilingual system of justice.

(a) Provinces not affected.- Under either the 20% or the 30% formula, the following provinces would not be required to provide bilingual justice: Newfoundland, Prince Edward Island, Saskatchewan, Alberta, British Columbia, Yukon and the Northwest Territories.[1]

(b) Manitoba.- In this province, only census division number 1 would appear to qualify even if the 30% requirement were introduced. Indeed, this division has a total population of 28,734, of which

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1. cf. 1.157 and 1.160 for our conclusion that both these Territories are still officially bilingual.

8,922 (or 31%) claimed French as their mother tongue. If, instead of taking census divisions as our point of reference, we refer to cities having more than 10,000 inhabitants, the situation would be the same since the only such city in Manitoba which might qualify is St. Boniface out of whose total population of 37,600, 13,370 (or 35.5%) speak French as their mother tongue. Admittedly in less populous and purely local or municipal jurisdictions, the situation might be more favorable to French, but the published census figures do not provide such local results.

(c) New Brunswick.- In this province, the following six counties out of a total of 13 meet the 30% requirement:

Name	Total population	French	Percentage of French
Gloucester	66,343	56,555	85.2%
Kent	26,667	21,836	81.8%
Madawaska	38,983	36,732	94.2%
Restigouche	40,973	24,975	60.9%
Victoria	19,712	7,393	37.5%
Westmorland	93,679	37,940	40.5%

If the 20% requirement were imposed, a seventh county should be added, that of Northumberland whose total population is 50,035, of which 13,346 have French as their mother tongue (or 26.6%).

If municipalities of over 10,000 souls were taken instead of census divisions or counties, only the following four New Brunswick municipalities would fall within either formula:

Name	Total population	French	Percentage of French
Bathurst Parish	10,420	6,541	62.7%
Edmundston	12,791	11,354	88.7%
City of Moncton	43,840	14,105	32.1%
Parish of Moncton	10,740	3,791	35.2%

This illustrates vividly the potential temptation of gerrymandering bilingual jurisdictions out of existence by rearranging the boundaries of judicial districts so as to cut the proportionate sign of the linguistic minorities within them. This problem will be discussed at the end of the present section.

(d) Nova Scotia.- Only two out of the 17 counties of Nova Scotia would fall within the formula, even if it were based on 30%:

Name	Total population	French	Percentage of French
Digby	20,216	7,631	37.7%
Yarmouth	23,386	7,671	32.8%

Conversely, if municipalities of over 10,000 inhabitants were taken as a criterion, only the following municipalities would qualify:

Name	Total population	French	Percentage of French
Inverness	15,072	4,277	28%
Richmond	11,250	5,411	48%

(e) Ontario.- Out of 54 counties in Ontario, the following 7 would qualify under the 30% rule:

Name	Total population	French	Percentage of French
Cochrane	95,666	44,147	46.1%
Glengarry	19,217	9,133	47.5%
Nipissing	70,568	25,408	35.6%
Prescott	27,226	22,491	82.6%
Russell	20,892	16,166	77.3%
Stormont	57,867	21,206	36.6%
Sudbury	165,862	54,940	33.1%

If the requirement were lowered to 20% the following 2 counties should be added:

Name	Total population	French	Percentage of French
Carleton	352,932	80,941	22.9%
Timiskaming	50,971	13,617	26.7%

If municipalities of more than 10,000 souls were taken as a criterion, then the following Ontario communities would have to have bilingual justice:

Name	Total population	French	Percentage of French
Cornwall	43,639	18,496	42.3%
Eastview	24,555	14,976	60.9%
Elliot Lake	13,179	3,667	27.8%
Gloucester, twp.	18,301	7,249	39.6%
Ottawa	268,206	56,882	21.2%
Sudbury	80,120	23,337	29.1%
Timmins	29,270	11,961	40.8%
Widdifield	12,063	2,472	20.4%

(f) Quebec.- At the present time, as we have seen[1] all Quebec courts are bilingual. If the Constitution were to be modified to require bilingual justice in other provinces, it is doubtful that they would countenance a reduction of the protection given in Quebec to the English-speaking minority. However, as an illustration of the fact that the adoption of either formula, even the 20% requirement would wipe out most bilingual jurisdictions in Quebec, we have computed the results of their application to Quebec. It will be evident from our figures that except for the Montreal metropolitan area, the right to justice in English benefits only an extremely small minority.

i) 30% formula.- If the 30% formula were to be used, only the following 5 out of a total of 75 census divisions or counties would require bilingual justice:

Name	Total population	English	Percentage of English
Argenteuil	31,830	9,690	30.4%
Brome	13,691	7,175	52.4%
Gatineau	44,308	13,428	30.2%
Huntingdon	14,752	5,901	40%
Pontiac	19,947	10,979	55%

1. In 4.18.

ii) 20% formula.- If the requirement of English-speaking population were lowered to 20%, it would add the following 7 counties or census divisions:

Name	Total population	English	Percentage of English
Chambly	146,745	35,164	23.9%
Chateauguay	34,042	10,161	29.8%
Compton	24,410	4,912	20%
Missisquoi	29,526	6,328	21.4%
Montreal Island	1,747,696	419,320	24.4%
Stanstead	36,095	8,318	23%
Vaudreuil	28,681	6,784	23.6%

This still means no more than 12 counties or census divisions out of a total of 75. Bilingual justice in most of Quebec is obviously a privilege awarded to a very small segment of the population.

iii) Counties excluded.- The overwhelming majority of counties and census divisions, having less than 20% of their population claiming to speak English as their mother tongue, could not claim the right to bilingual justice under either formula. It should be noted that according to the 1961 census, out of 5,259,211 people in Quebec, only 697,402 (or 13.2%) claimed English as their mother tongue. Even if the 20% formula were adopted, the number of people remaining in the other counties and claiming English as their mother tongue would be 159,242 out of a total of 3,087,488.

iv) Municipal criterion.- If the same formula is applied to Quebec municipalities having a population of more than 10,000, it will be noted at once that all of them but one (Noranda) are situated on the Island of Montreal or in the immediate vicinity:

Name	Total population	English	Percentage of English
Beaconsfield	10,064	8,327	82.7%
Chomedey	30,445	7,956	26.1%
Côte St. Luc	13,266	9,458	71.2%
Dorval	18,592	12,309	66.2%
Lachine	38,630	14,809	38.3%
Laflèche	10,984	2,455	22.3%
Lasalle	30,904	11,513	37.2%

(cont'd.)

Name	Total population	English	Percentage of English
Mount-Royal	21,182	14,045	66.3%
Noranda	11,477	3,261	28.4%
Outremont	30,753	6,877	22.3%
Pierrefonds	12,171	6,524	53.6%
Pointe-Claire	22,709	18,412	81%
St. Hubert	14,380	5,933	41.2%
St. Lambert	14,531	7,970	54.8%
St-Laurent	49,805	24,293	48.7%
Verdun	78,317	30,818	39.3%
Westmount	25,012	17,391	69.5%

The fact is that the English-language population in Quebec is essentially urban. Indeed, out of a total of 697,402 persons giving English as their mother tongue in the 1961 census, 604,504 lived in an urban environment, and only 92,898 were described as rural[1]. We draw attention to the fact that the City of Montreal proper would not qualify since its 203,562 English-speaking inhabitants represent only 17% of the total population of 1,191,062.

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1. Bulletin 1.2-9, Population, published by the Dominion Bureau of Statistics, Catalogue No. 92-549 (Vol: I- Part:2), p. 65-5. All figures in this section are based on this Bulletin.

(g) Comments.- It is obvious that the introduction of bilingual justice on a wide and systematic scale in Canada will create great disturbances. Furthermore, while the overwhelming majority of the English-speaking minority in Quebec is concentrated in the Montreal metropolitan area, this is not the case with the French minority in New Brunswick. There, out of a total population of 597,936, 210,530 gave French as their mother tongue. But, of these, 136,845 were described as rural. Of the remaining 73,685, only 23,754 lived in towns of more than 30,000 inhabitants. In fact, 20,639 lived in towns of between 1,000 to 2,499 inhabitants; 3,488 in towns of between 2,500 and 4,999 population; and 6,602 in cities of between 5,000 and 9,999.[1] In Nova Scotia, 39,568 people out of a total of 737,007 gave French as their mother tongue. Of these 28,608 (or 72.3%) were described as rural.[2]

It is only in Ontario that there was more equilibrium. There, out of 425,302 people who gave French as their mother tongue, only 128,157 (or 30.1%) were described as rural. One hundred and twenty-nine thousand, five hundred and eighty-nine (129,589) of the remaining 297,145, or almost half, lived in cities of more than 100,000 inhabitants; 88,746 in cities of between 30,000 and 99,999. The remaining 78,810 live in cities or towns of less than 30,000 inhabitants. What the foregoing analysis underlines is that if bilingual justice will depend

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1. Id., p. 65-5.
2. Id., p. 65-3.

on population figures related to a given geographic area, the temptation might be strong to gerrymander a potentially bilingual jurisdiction out of existence by re-arranging judicial districts and divisions. The American and Canadian experience with electoral districts demonstrates beyond doubt that this is not a mere possibility, but could even be described as a probability in the absence of strong safeguards. Conversely, minority groups might be tempted to require unrealistic territorial re-adjustments to qualify for bilingual administration of justice. If their wishes were respected, it might lead to large, unwieldy judicial districts creating an injustice for the majority. These are all very real dangers which compound the various practical difficulties of bilingual justice pointed out in the present chapter.[1] While we do not believe that any of these drawbacks cannot be overcome, we can only recommend caution and the provision of all possible safeguards. The creation and maintenance of bilingual judicial districts will prove to be an enormously complex task demanding the reconciliation of divergent claims and requirements. Its supervision might very well have to be entrusted to a neutral constitutional court or commission whose function it might be to insure that the ligitimate claims of the minority be respected without depriving the majority of its own rights.

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1. Not to mention the problems of administring bilingual justice with unilingual statutes!

USE OF TAPE RECORDING IN ALASKA COURTS

We quote in its entirety a despatch by Lawrence E. Davies in The New York Times, Sunday, November 10, 1963, p. 69:

"ALASKA'S COURTS TAPE THEIR TRIALS

Time and Cost of an Appeal is Now

Least in Nation

By. LAWRENCE E. DAVIES
Special to The New York Times

ANCHORAGE, Alaska, Nov. 6 - Two investigators from the Federal court system are on a mission to Alaska this week.

Warren Olney 3d, administrative director of the Federal courts, based in Washington, and Judge John Biggs Jr., chief judge of the Court of Appeals for the Third Circuit, in Philadelphia, came to Alaska to look into the appeals process in the state court.

'The cost of an appeal in Alaska when it was a territory and all of the courts were Federal courts was greater than anywhere else in the nation,' Mr. Olney said today. 'Now Alaska as a state is the cheapest state in the Union for a court appeal - and the fastest. We decided we had better find out how it is done.'

Chief Justice Buell A. Nesbett of the Alaska Supreme Court estimates that the state is saving $250,000 a year through the use of electronic court reporting. The same method, he says, has reduced appeals by 75 per cent because the litigants, who calculated on long delays in final decisions - a year or two or even more - know now that their appeals will be heard with dispatch. Many of these cases had dealt with drunkenness and reckless driving charges.

The Alaska system has disturbed the National Association of Court Reporters, which sent a representative here a month or so ago to investigate.

'Court reporting is a dying profession,' Mr. Olney said. 'We needed an additional court reporter in Los Angeles within the last six months and had to go to Chicago to find him.'

In Alaska the Magistrates' and Superior Court rooms are equipped with an electronic reporting system.

Each courtroom has five microphones. There is one for the judge, one for the clerk, one in the witness box, one at each counsel table. A Loudspeaker is installed on the wall above the judge.

The clerk, called an 'in-court deputy,' operates a recorder, with a slowly moving tape, along with his regular duties as clerk. A pre-amplifier modulates voices on the way from the microphones to the recorder so that they all come out on the tape at about the same sound level.

Former State Senator Thomas B. Stewart, administrative director of the Alaska State Court System, said that in appeals from the Magistrates' Court to the Superior Court the Superior Court judge may 'listen to the tape instead of having a new trial, with witnesses brought in all over again.'

'Also,' Mr. Stewart said, 'as a device to save money, rather than have briefs printed and yet to preserve uniformity and neatness, the Supreme Court prescribed multilithing master sheets for submission of the briefs, specifying the kind of type, margins, and so forth. These sheets are filed with the clerk of the Supreme Court, who processes them through a multilith producing machine and distributes them to the lawyers and the justices. Lawyers are charged a fee commensurate with the actual cost of the paper and the labor.'

Justice Nesbett also remarked that if any question arose during a trial as to what a witness had said, 'the loudspeaker is turned on in court and everybody listens - the judge and the counsel - and all make a stab at interpreting it.'

'Under no condition,' he asserted, 'would we switch back to the old method. Hardly a month passes when we don't find a new advantage in this new method.'

He went on:

'Courts are facing a terrific demand as a result of recent Supreme Court decisions enlarging the rights of indigents to appeal at the expense of the state. Many state courts are faced with problems of granting appeals in hundreds of disposed-of cases. Getting a transcript of the record from reporters is a crushing problem.' "

CHAPTER V

THE LANGUAGE OF JURIES AND MIXED JURIES

I. INTRODUCTION.

5.01 Juries and language rights.-

The right to trial by jury is the right to be tried by one's peers. One aspect of this right can be the right to be tried by jurors speaking one's own language. As we will see[1], this right was considered sufficiently important in England from the 13th century until at least 1870, and in Newfoundland until that date, to entitle even aliens or foreigners to demand a jury de medietate linguae , i.e. composed for one half of aliens. In Canada the situation has been complicated by the coexistence of two great races. When legislators and judges have had to concern themselves with the linguistic aspect of the right to trial by jury, it has been essentially in order to determine the extent to which a French - speaking or English-speaking party could insist on a jury of his own language. We will have occasion to see that the rule can vary from an absolute right to be tried in one's own language to a mere right to a mixed jury (de medietate linguae)or even a complete denial of the right to be tried by a jury of a language different from that of the majority in the area. It is only in Quebec that

1. in 5.03

there exists a possibility for a French-or English speaking individual to request trial by his linguistic peers. In Manitoba the Criminal Code recognizes only a right to a mixed jury. We will see that the right to a civil mixed jury was abolished in Manitoba in 1890.

5.02 The constitutional position.-

If the right to a jury is treated as a substantive matter rather than one of procedure, then the whole subject of jury trial falls within exclusive provincial jurisdiction under s.92(14) of the B.N.A.Act, at least insofar as civil and criminal courts are concerned. Naturally, the Parliament of Canada would always create federal jury trials under the power granted to it by s.101 of the B.N.A.Act to establish additional courts for the better administration of federal law. We know that it has not done so, except for the creation of the Supreme and the Exchequer courts. If, on the other hand, the right to a jury trial is considered to be a question of procedure, then both the provincial and federal legislatures would have jurisdiction depending on the subject matter, and the Federal Parliament would have exclusive jurisdiction over criminal juries under s. 91(27) of the B.N.A.Act. Until now the question has been treated as one of procedure and more particularly the right to jury trial in criminal matters has been regulated by the Criminal Code. The constitutional expert , Bora Laskin writes:[1]

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1. In Canadian Constitutional Law, 2nd ed.,Toronto, 1960,p.813.

> "The mode of trial, whether jury or non-jury, involves constitutional questions where federal matters are triable in provincial courts. While in the absence of specific federal legislation, provincial modes of trial will apply to federal civil causes of action or proceedings, the express reservation to the Dominion of procedure in criminal matters has resulted in an number of problems respecting the use of grand and petit juries in criminal proceedings. It is clear that it is for Parliament alone to determine whether jury trial should be available in criminal prosecutions and, if so, the number to constitute the jury and the number by whom a verdict shall be given. . . . . Equally is it for Parliament to determine whether a special jury shall be available in a criminal trial. . . . . The Situation should be no different in respect of the use of a grand jury, but it has been held that while the selection or qualification and summoning of grand jurors, and the number by whom a bill may be found is a matter for Parliament alone, ... the number of jurors returned to serve on a grand jury is a matter for the Province as pertaining to the constitution of the provincial court. . . . . The fact that Parliament has, in respect of jury matters, legislated by reference to or adoption of provincial legislation (see Cr.Code,s. 534) does not militate against its independent competence."

But apart from this question of jurisdictional competence, there is no constitutional guarantee in Canada of trial by a jury composed either entirely or partly of members of one's own language group. Indeed, the only provision of the B.N.A. Act dealing with the language of court proceedings (s.133) provides for the limited right to use either French or English "in any Pleading or Process in or issuing from any Court of Canada under this Act and in or from all all or any of the Courts of Quebec." The language of s.133 would have to be almost unreasonably stretched if one were to interpret it as guaranteeing a right to a jury of one's own language.

Section 133 provides no such guarantee any more than it does with respect to the language of the judge. Its wording only permits a party in a federal or Quebec court to use either French or English. If either the bench or the jury do not understand the language used by such party, s. 133 might be said at best to require interpretation. As worded we believe that it does not adequately cover the question of jury trial. In fact we would recommend that the possibility of a constitutional amendment be considered if it is deemed insufficient to leave the matter to the discretion of the Federal Parliament or of the various Provincial Legislatures.

As we will see in this chapter, only Quebec and Manitoba still provide for mixed criminal juries, while in Quebec there is still a possibility to be tried by a jury consisting entirely of citizens speaking either English or French, as the case may be. Similar provisions exist in Quebec with respect to civil juries. No other jurisdiction in Canada allows for anything but English-speaking juries. This raises the question of the validity of jury proceedings in the Northwest Territories and in the Yukon. As we have seen[1] French was never legally abolished in the Northwest Territories and is still an official language. Furthermore, we came to the conclusion[2] that the Territorial Court and the Court of Appeal for the Territories, and perhaps even the Police Magistrates there, are courts created by the federal parliament and so fall within the scope of s. 133 of the B.N.A. Act. If this is so, one may legitimately raise doubts as to the legality of unilingually English juries in

1. In 1.156 and 1.157.
2. In 4.17 (f).

the Territories. Indeed, the Jury Ordinance[1] stipulates that the only persons qualified for jury service are those who are "able to speak and write the English language ". The same remarks could be made about the position of juries in the Yukon, the courts of which also seem to fall within the definition of "Courts of Canada" governed by s. 133 of the B.N.A. Act.[2]

5.03 English Law before the Conquest.-

Although there is no legislative enactment on mixed juries before the year 1787 in Canada, the institution of mixed juries dates back to the time of King Ethelred of England.[3] In a statute entitled de Monticolis Wallei it was ordained that in cases between the Anglo-Saxons and the Wallei the jury should be composed of twelve legal men of whom six were to be Anglo-Saxons and six were to be Wallei.

The statute 28 Edward III, cap. 13, s. 2, enacts:-

> "That all manner of inquests and proofs which be to be taken or made amongst aliens and denizens, be they merchants or others, as well before the Mayor of the Staple, as before any other Justices or Ministers, although the King be party, the one-half of the inquests or proofs shall be denizens, and the other half aliens, if so many aliens and foreigners be in the town or place where such inquest or proof is to be taken, that be not parties, nor with the parties in contracts, pleas, or other quarrels, whereof such inquests or proofs ought to be taken; and if there be not so many aliens, then shall there be put in such inquests or proofs as many aliens as shall be

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1. 1956 R.O.N.T., c. 55, s. 5 (i).
2. cf. 1.159 and 1.160 and 4.17 (g).
3. R. v. Vonhoff (1867) 10 L.C.J., p. 292.

> found in the same towns or places which be not thereto parties, nor with the parties, as aforesaid; and the remnant of denizens, which be good men, and not suspicious to the one party, nor to the other."[1]

This enactment, enforced by the statute 8 Henry VI, cap. 29, and sanctioned by the jurisprudence of the British Courts during upwards of four centuries, formed part of the body of English Criminal Law introduced into this country, when it was ceded to the arms of England by the King of France, as acknowledged by the Imperial statute 3-4 George III, which, in that respect, was merely declaratory.[2] The institution of de medietate linguae jury continued in England until 1870. In effect, it resulted from the recognition of the right of aliens to have at least one-half of the jury trying them composed of aliens. But it should be noted that despite its name, such jury did not necessarily have to be composed of aliens who came from the same country and spoke the same language as the accused.[3] It was abolished by the 1870 Naturalization Act[4].

5.04 Introduction of mixed juries in Canada: 1764-1766.[5]

The Ordinance of September 17, 1764 establishing a new system of judicature provided that in the Court of King's

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1. quoted in R. v. Vonhoff, supra, pp. 292-3.
2. R. v Vonhoff, supra.
3. Kennedy, James, A Treatise on the Law and Practice of Juries, London, 1826, pp. 87-88; Forsyth, William, History of Trial by Jury, London, 1852, at p. 230.
4. 33 Vict., c. 14, s. 5: "From and after the passing of this Act, an alien shall not be entitled to be tried by a jury de medietate linguae, triable in the same manner as if he were a natural-born subject."
5. (next page)

Bench all His Majesty's subjects in the Colony were to be admitted on juries without distinction. French-Canadians were, therefore, allowed to serve on these juries. This scheme met with much opposition from the English merchant class who organized a formal protest contained in a document known as the Presentments of Protestant Grand Jurors of Quebec, dated October 16, 1764. The Jurors expressed their objection to the indiscriminate commission of Canadians, that is to say French-Canadians, on King's Bench juries. The opinions expressed in the Presentments foreshadow the introduction into Quebec of the institution of mixed juries as it is known today. The Grant Jurors objected to participation of Roman Catholic jurors in trials between Protestants. They conjectured that the Catholic inhabitants might have some reservations such as the participation of Protestant jurors in cases between Roman Catholics. These objections, manifestly based on religious considerations, were probably based on linguistic grounds as well,

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5. **(from previous page):** All sections in the present chapter dealing with the history of juries in Canada are based on information provided in greater detail in chapter I to which the reader is referred specifically.

for apart from whatever feelings of prejudice and intolerance they may have harboured, the Grand Jurors most certainly would have wished to avoid the disadvantages attendant upon a jury's incomprehension of court proceedings. The French-speaking jurors answered this objection by pointing out that it was contrary to the purpose of the Governor's Ordinance, which recognized the necessity of establishing a jurisdiction where the new subjects could be judged according to their customs and in their own language. They stated that it seemed far more equitable that the new subjects be heard by persons whom they understood and by whom they could be understood. Moreover there was no English advocate who knew the French language well enough to manage without an interpreter and because of this the French-Canadians would incur exorbitant costs.[1] The Presentments and the answers thereto were submitted in a report to the Lords of the Committee for Plantation Affairs. In regard to allowing entire French-Canadian juries in cases where the dispute was between a British-born subject and a French-Canadian, the Committee came to the conclusion that "under the present circumstances of this Province, we are of opinion, it would have been advisable to have enacted, that in all cases where the action lay between a British-born subject and a Canadian, an equal number of each should have been impanelled upon the jury if required by either party."[2] Consequently, on February 17, 1766 Royal instructions were sent to Governor Murray. They provided

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1. cf. 1.40.
2. cf. 1.46

that in cases where all the parties were British-born subjects the jury was to consist of British subjects only. In cases between a British-born subject and a French-Canadian there was to be an equal number of British subjects and French-Canadians if this procedure was required by the parties. Canadian subjects were to be permitted to practice in all courts as barristers, advocates, attorneys, and proctors. The new Ordinance of Judicature of July 1, 1766 embodied the above instructions and added that when cases between Canadian subjects, only Canadians could serve on the juries.[1]

In a report of the Board of Trade dated July 10, 1769, relative to the state of the Province of Quebec, there is a reversal of the policy contained in the Royal Proclamation of 1763. This report recommended that instead of impanelling Canadian subjects on juries indiscriminately with natural-born British subjects, their admission should be allowed with a proviso that all criminal offenses should be tried by juries de medietate linguae, composed of natural-born Canadian subjects, except in cases where the accused was English-speaking, or where a Canadian stood charged with murder, in which cases all the members of the jury were to speak the language of the accused.[2]

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1. cf. 1.49.
2. cf. 1.63.

The Quebec Act of 1774 wiped out the Proclamation of 1763 and all the Ordinances of the Governor and Council of Quebec relative to civil government and the administration of justice.[1]

5.05 Ordinance of 1787 enacting mixed juries.-

In 1787 there appeared the first legislative enactment on mixed juries which can be regarded as a precursor of today's provisions for mixed juries in the Criminal Code. On February 26, 1787 was passed an Ordinance to regulate proceedings in certain cases in the Court of King's Bench and to give the subject the benefit of appeal from large fines, which provided for mixed juries in criminal cases. There were to be on any jury at least six jurors who could understand the language of the defence of the party prosecuted; that is to say, the language, whether English or French, employed by the accused's lawyer, who normally would conduct the defence.[2]

5.06 Mixed juries abolished in Upper Canada: 1791.-

Shortly after the Province of Upper Canada was created by the Constitutional Act of 1791, a statute was passed to establish trials by jury. This statute abolished mixed juries in Upper Canada.[3] The institution of mixed juries has never since been revived in Upper Canada and its successor, the Province of Ontario.

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1. cf. 1.71.
2. cf. 1.81
3. cf. 1.97

5.07 Mixed juries in Lower Canada.-

Under the Act of Union the institution of mixed juries was retained in Lower Canada. In An Act to regulate the summoning of Jurors in Lower Canada[1], it was provided that aliens could be jurors only when a jury de medietate linguae was prayed for and obtained. In 1851 this Act was amended.[2] As a result of the complaints directed towards mixed juries in Lord Durham's Report elaborate procedures for mixed jury trials in civil and criminal cases in the Quebec and Montreal districts were set out. In order that there be less tampering with the composition of the jury, the Act provided that of the Grand Jurors and Petit Jurors to be summoned to serve before any criminal court in Montreal or Quebec, one-half should be composed of persons speaking the English language and the other half of persons speaking the French language. Separate lists were to be kept of English and French jurors, and the selection of Grand Jurors was to be made therefrom. The Act also provided that mixed juries would be the exception rather than the rule, and that as insofar as possible the language of the jury would be the language of the Defence. If there were not enough persons skilled in the language of the Defence the trial was to be postponed. The Act further set out the modalities of the right to a mixed jury in civil cases. The provisions of the Act were repeated in An Act respecting the selecting and summoning of Jurors[3]. In 1864 the Parliament of Lower Canada passed an Act known as the Canada Jury Act, 27-28 Vict., c.41,

1. 1847, 10 and 11 Vict., c. 13, s. XXIII; cf. 7.10.
2. 1851, 14 and 15 Vict., c. 89.
3. 1861, C.S.L.C., c. 84.

the provisions of which were similar to the previous statute. Under s. 129 of the British North America Act of 1867 this Act remained in force after Confederation. The British North America Act also conferred on the Dominion Government jurisdiction over criminal procedure. The statute known as the Canada Jury Act was repealed by the statute 46 Vict., c. 16. However, since criminal procedure was at that time a matter under federal jurisdiction, the statute repealing the Canada Jury Act could not have repealed those provisions falling under Dominion jurisdiction. Therefore, the enactment contained in the Canada Jury Act which gave the right to accused persons whose language was either English or French to have a mixed jury remained in force.[1] This provisions is still in force today. The Criminal Code, s. 535, does not directly confer this right. All it does is establish the procedure by which the right is to be enforced. The provisions of the Canada Jury Act with respect to civil juries are now found in the Code of Civil Procedure, art. 436, with several modifications.

5.08 Right of aliens to jury de medietate linguae.-

Until 1869 the institution of the jury de medietate linguae was used in respect of aliens in R. v Miller in 1855[2]. A German-speaking accused who could speak neither French nor English and who was a German national asked for a jury composed one-half of natives, that is of Canadian citizens, and the other half of aliens like himself. The motion was granted. In 1866 in the case of R. v Vonhoff[3]

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1. Duval v. R. (1938) 64 B.R. 270, at p.284; R. v Sheehan (1897) 6 B.R. 139, at p. 140; R. v Yancey (1899) 8 B.R. 252 at p. 253; Alexander v. R. (1930) 49 B.R. 215 at p. 216.
2. (1864) 8 L.C.J. p. 280.
3. supra.

the same facts occurred. At the time of the trial the Canada Jury Act was in force. The court granted the motion for a jury de medietate linguae and ordered that a writ of venire facias be issued to summon 36 aliens speaking the German language, which the accused spoke, if so many could be found in the district where the trial took place. In 1869 in the Act respecting procedure in criminal cases[1] the right for an alien to be tried by a jury de medietate linguae was abolished and it was thereafter provided that he should be tried in the same manner as a British citizen. This provision was carried into the Act in the Revised Statutes of Canada of 1886.[2] These provisions were incorporated into the Criminal Code of 1892 in s. 663 and repeated in the Criminal Code of 1906 in s. 922. The present Criminal Code contains no provisions in respect of the jury de medietate linguae for aliens.

5.09 The appearance and disappearance of mixed juries in Manitoba: 1870-90.-

The Province of Manitoba was established in 1870[3]. After the Province of Manitoba was created there was passed an Act to extend to the Province of Manitoba certain of the criminal laws now in force in the other Provinces of the Dominion,[4] which made provision for the right of an accused to a mixed jury in Manitoba criminal cases. The right to a mixed jury was recognized in

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1. 32-33 Vict., S.C. 1869, c. 29, s. 39.
2. c. 174, s. 161.
3. The Manitoba Act, 1870, 33 Vict., c. 3.
4. 34 Vict., S.M. 1870, c. 14. cf. 1.140.

various subsequent Manitoba statutes.[1] In 1876, the Act respecting Jurors and Juries[2] provided that the parties could waive by consent the right to a mixed jury. In 1881 An Act for dividing the Province of Manitoba into Judicial Districts and establishing Courts therein[4] provided for mixed juries in both criminal and civil cases. Two years later, The Administration of Justice Act [5] provided for the right to exclusively French juries where possible, but limiting its application to the eastern judicial district only. There were further technical changes made in jury provisions in the following years.[6] The end of mixed juries came in Manitoba in 1890 when French was abolished by statute as an official language.[7]

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1. The Supreme Court Act, (Man.) 34 Vict., 1871, c. 2, s. 19; amended by 1872 Vict., c. 35.
2. 39 Vict., S.M. 1876, c. 3; amended by 1877, 40 Vict., c. 19.
3. in s. XXXVI.
4. 1881, 44 Vict., c. 28.
5. 1883, 46-47 Vict., c. 1, s. 7.
6. e.g. by 1884, 47 Vict., c. 4, amending 1883 46-47 Vict., c. 1, and by 1885, 48 Vict., c. 17 consolidating previous statutes providing for mixed juries in both civil and criminal cases.
7. An Act to Provide that the English Language shall be the Official Language of the Province of Manitoba, 1890, 53 Vict., c. 14, s. 1.

5.10 Newfoundland: Juries de medietate linguae until 1870.-

Newfoundland, which only became part of Canada in 1949, appears to have possessed the institution of de medietate linguae juries at least until 1870. In 1876, the Newfoundland Supreme Court, in the case of the Queen v. Melendez[1], stated that in the absence of specific Newfoundland legislation, the right to a jury de medietate linguae depended on its existence in English law at that time[2] and that the 1870 Naturalization Act[3] had abolished such juries for aliens in England since 1870. At that time Newfoundland legislation contained no provision dealing with such type of juries. The Trial by Jury Act[4] was silent on the point. A few years later the law was amended to specifically exclude such juries. We have not been able to determine the exact year, but the Trial by Jury Act contained in the 1892 Consolidated Statutes of Newfoundland states:[5]

> "The right of an alien to be tried by a jury de medietate linguae is hereby abolished, and he shall be tried in the same manner as if he were a natural born subject of Her Majesty."

It is interesting to note that this prohibition still appears today in the statutes of Newfoundland.[6]

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1. (1874-1884) Nfld. Reports, 121.
2. A statute of the Criminal Law, 1872 Consolidated Statutes of Newfoundland, c. 39, s. 1: "In all cases not provided for by local enactment the Law of England as to crimes and offences, shall be the law of this Island and its dependency ...".
3. cf. 5.03
4. c. 19 of the 1872 Consolidated Statutes of Newfoundland.
5. c. 56, s. 4.
6. The Judicature Act, 1952, R.S.Nfld., c. 114, s. 93.

II - JURIES IN CRIMINAL CASES

A - QUEBEC

5.11 Criminal Code: section 535.-

Quebec and Manitoba are the only provinces in which the accused can demand, as the case may be, a jury composed of individuals who all speak his language or some of which do. Section 535, dealing with juries in the Province of Quebec, states:

> "535. (1) In those districts in the province of Quebec in which the sheriff is required by law to return a panel of petit jurors composed one-half of persons who speak the English language and one-half of persons who speak the French language, he shall in his return specify in separate lists those jurors whom he returns as speaking the English language and those whom he returns as speaking the French language, and the names of the jurors summoned shall be called alternately from those lists.
>
> (2) In any district referred to in subsection (1) the accused may, upon arraignment, move that he be tried by a jury composed entirely of jurors who speak the language of the accused if that language is English or French.
>
> (3) Where a motion is made under subsection (2), the judge may order the sheriff to summon a sufficient panel of jurors who speak the language of the accused unless, in his discretion, it appears that the ends of justice are better served by empanelling a mixed jury."

The right to a mixed jury or a jury of one's own language provided for in s. 535 Cr. C. is thus made subject to the Quebec Jury Act[1].

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1. 1964 R.S.Q. c. 26.

The relevant sections of this Act are:

"26. In the district of Montreal, the sheriff is required to summon mixed juries, composed as provided in section 30, and, in the other districts, ordinary juries as provided in section 29."

"27. Nevertheless a judge of the Superior Court sitting for the district may, whenever he deems it advisable and at any time before the formation of a panel of jurors, order an ordinary jury to be summoned in the district of Montreal or a mixed jury in any other district.

If there be no judge present in the district at the time, the application may be made to a judge qualified to preside over the court in Quebec or in Montreal, according to the appellate division to which the district in question belongs.

Such order shall remain in force as long as it has not been amended or revoked by the judge."

"28. The panel of jurors, in the case of an ordinary jury, must comprise forty regular jurors and twelve supplementary jurors.

In the case of a mixed jury, it shall comprise sixty regular jurors and twenty supplementary jurors."

"29. When an ordinary jury has to be summoned, the sheriff shall draw up the panel of jurors by entering thereon the requisite number of names in the order in which they appear on the list prepared at the drawing of lots contemplated in sections 35 and following."

"30. When a mixed jury has to be summoned, the sheriff shall draw up the panel of jurors in the manner provided in section 29, but by taking jurors speaking the English language and jurors speaking the French language, in equal numbers, in the order in which they respectively appear on the two lists prepared at the drawing of lots contemplated in sections 35 and following."

> "31. In districts in which a mixed jury cannot be summoned without an order as contemplated in section 27, any judge having authority to preside over the court may, if he deem it expedient, upon application for a jury de medietate linguae, authorize the sheriff of the district to summon a mixed jury.
>
> If there be no judge present in the district at the time, the application may be made to a judge qualified to preside over the court in Quebec or in Montreal, according to the appellate division to which the district in questions belongs.
>
> In the case contemplated in this section, the summoning shall be done at least forty-eight hours before the date and hour fixed for the appearance of the jurors."
>
> "32. When jurors with special qualifications as to language are required, such qualifications must be entered opposite the name of each juror on the panel, and such entry shall be prima facie evidence of the existence of such qualification."

In other words, in the Province of Quebec, the sheriff is only required by law to summon mixed criminal juries in the district of Montreal (except when a judge of the Superior Court orders otherwise[1]) and in other judicial districts upon the order of a Superior Court judge.[2] If we read s. 535 of the Criminal Code together with the pertinent sections of the Quebec Jury Act, we find the law to be as follows:

(a) the accused can move that he be tried by a jury composed entirely of jurors who speak his language if it is English or French;

(b) if the judge decides that "the ends of justice are better served by impanelling a mixed jury" he can

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1. s. 27.
2. ss. 27 and 31.

nevertheless so order;

(c) in districts other than that of Montreal while the accused has no right under the law to insist upon a jury of his own language, he is entitled, at least, to move for a mixed jury;

5.12 Jurisprudence on trial by jury in Quebec.-

The somewhat confused rules of s. 535 Cr. C. and of the Quebec Jury Act have been interpreted by the courts as follows:

(a) the right of an accused to a trial by jury composed entirely of persons who speak his own language when that is either English or French is not absolute[1]; the accused's request for a jury composed entirely of persons speaking his language should only be refused for special reasons.[2] In other words, the request for such jury should be granted unless there are special reasons to refuse it. Although the court must respect the primary rights of the accused, he must not overlook those of society.[3]

(b) the right to a mixed jury is absolute only insofar as the law authorizes a choice between a French-speaking and an English-speaking jury and the accused must have

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1. Piperno v. R. [1953] 2 S.C.R. 292 at p. 295 affirming [1953] B.R. 80; Reference re R. v. Coffin [1956] S.C.R. 191, at p. 207.
2. R. v Twyndham and McGurk (1943) 79 C.C.C. 395.
3. Reference re R. v Coffin, supra.

been allowed first to move for a jury entirely in his own language[1]. As we have seen in the previous sub-paragraph, if a motion for such unilingual jury is refused, the judge must at least order the empanelling of a mixed jury. If the accused speaks at least one of the official languages, he has the right to at least a mixed jury, even if he is a foreigner.[2] The language of accused's counsel is irrelevant.[3]

(c) Nevertheless, if the accused speaks both English and French equally well, he cannot object if the court orders a jury composed entirely of members speaking one of those languages.[4]

(d) If the accused speaks one of the official languages, he cannot ask for a jury composed entirely of persons speaking the other language.[5] In a recent case in Montreal a bilingual accused was ordered to stand trial for murder before an English-speaking jury even though he expressed a preference for a French-speaking one.[6] During the hearing on the Crown's motion for an all-English jury the accused stated that he was brought up in Ontario, where he received all his schooling in English, but that French was the exclusive language in his home. The judge

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1. Piperno v. R., supra.
2. Reference re R. v. Coffin, supra, at pp. 207 and 215; Alexander v. R., (1930) 49 B.R. 215; Piperno v. R., supra, at p. 295; Sheehan v. R., (1897) 6 B.R. 139.
3. R. v. Yancey (1899) 8 B.R. 252.
4. Piperno v. R., supra; cf. also Duval et al v. R., (1938) 64 B.R. 271; Veuillette v. R. (1919) 58 S.C.R. 414, affirming (1919) 28 B.R. 364; Mount v. R. (1931) 51 B.R. 482; Bureau v. R. (1932) 52 B.R. 15 at p. 18; Gouin v. R. (1937) 43 R.L.N.S. 149; Lacasse v. R. (1939) 66 B.R. 74, affirming (1938) 76 C.S. 45. (cont'd. next page)

concluded upon the evidence that the accused was more fluent in English than in French and ordered the impanelling of an English-speaking jury despite the accused's protest that "I am a French-Canadian and I want to be judged by French-Canadians."

(e) The composition of a jury is determined according to the familiarity of the jurors with the relevant language and not with their ethnic origin.[1]

(f) We have seen that the right of aliens to a jury de medietate linguae composed partly of aliens no longer exists in Canada. It has been held that if the accused speaks only a foreign language and neither French nor English, he can be tried by a jury composed entirely of either French-speaking members or entirely of English-speaking members.[2] If he speaks English or French fluently, in addition to a foreign language, the court can order a jury composed entirely of English- or French-speaking members.[3]

(g) A number of decisions have also been rendered in connection with procedure for mixed juries. For instance, it has been held that it is permissible in impanelling a mixed jury to

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footnotes cont'd. from previous page:

5. Lacasse v. R., supra; Mount v. R., supra; Duval v. R., supra.
6. The Montreal Gazette, Feb. 19, 1965, p. 17.

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1. R. v. Yancey, supra; Alexander v. R., supra at p. 217; Bureau v. R., supra; Lacasse v. R., supra.
2. Lagarde, Droit Pénal Canadien, supra, p. 829.
3. Piperno v. R., supra.

first admit to the jury six jurors speaking the language of the defence before calling any jurors of the other language; it is not necessary to call them alternately.[1] Once an accused has asked for a mixed jury and his motion has been granted, he has no right to move for revocation of the order although the court can use its discretion so to do.[2] If all the members of a mixed jury speak the language of the accused in addition to the other language for which they are officially impanelled, and all the proceedings are carried on in the language of the accused, the omission to use the other official language during the proceedings does not invalidate them, particularly if the accused has not objected throughout the trial.[3] On the other hand, a trial and verdict will be set aside on appeal if it is discovered that although one-half the jury was ostensibly sworn in as being French-speaking, one of those French-speaking jurors did not, in fact, know the language.[4]

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1. R. v. Dougall (1874) 18 L.C.J. 85.
2. R. v. Sheehan, supra, at p. 141.
3. Veuillette v. R., supra.
4. R. v. Chamaillard (1874) 18 L.C.J. 149. This decision should be contrasted with the case of R. v. Earl, (1894) 10 Man. R. 303, also reported at (1895) 31 Can. Law J. 37 discussed hereinafter (in 5.13) which held that the fact that one juror did not understand English was not a sufficient cause for a mistrial in Manitoba.

B - MANITOBA

5.13 Criminal Code: section 536.-

Section 536 of the Criminal Code provides for the right to a mixed jury in Manitoba as follows:

> "536. (1) Where an accused who is arraigned before the Court of Queen's Bench for Manitoba demands a jury composed at least half of persons who speak the language of the accused, if that language is either English or French, he shall be tried by a jury composed at least one-half of the persons whose names stand first in succession upon the general panel and who, not being lawfully challenged, are found, in the judgment of the court, to speak the language of the accused.
>
> (2) Where, as a result of challenges or any other cause there is, in proceedings to which this section applies, a deficiency of persons who speak the language of the accused, the court shall fix another time for the trial, and the sheriff shall remedy the deficiency by summoning, for the time so fixed, the additional number of jurors who speak the language of the accused that the court orders and whose names appear next in succession on the list of petit jurors."

The Manitoba Jury Act[1] does not provide, however, for the implementation of the right given in s. 536. We have not been able to ascertain the manner in which mixed juries are in fact summoned and impanelled in Manitoba. Further research would be indicated in this area.

5.14 Manitoba jurisprudence.-

There is only one reported case dealing with language problems in jury trials in Manitoba. In R. v. Earl[2] a Crown case was reserved on the question whether the fact that one of the twelve

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1. 1954 R.S.M. c. 130.
2. (1894) 10 Man. R. 303; also reported (1895) 31 Can. Law J. 37.

jurors sworn to try the prisoner did not thoroughly understand the English language was sufficient to cause mistrial. Throughout the trial one of the jurors had not indicated in any way that he did not understand anything that was being said, but afterwards he signed an affidavit stating that he did not speak English well enough to understand all the evidence, the addresses of counsel and the judge's charge. The Court in Banc held that this evidence, coming after trial, was too late, and that mistrial could not be declared, nor could a new trial be granted on that ground. Moreover, the court held that ignorance of the English language was not a ground of challenge of a juror under the relevant Manitoba laws as they then stood. A juror should know either French or English not both in a mixed jury. All that could have been asked for was the translation of the proceedings for the benefit of the juror in question.

C - OTHER PROVISIONS

5.15 Other provisions of the Criminal Code.-

We also draw attention to the other relevant provisions in the Criminal Code dealing with mixed jury in Quebec and in Manitoba:

> "544. Where an accused who is charged with an offence for which he is entitled to twenty or twelve peremptory challenges in accordance with this Part is to be tried pursuant to section 535 or 536 by a jury composed one-half of persons who speak the language of the accused, he is entitled to exercise one-half of those challenges in respect of the jurors who speak French."

> "579. No omission to observe the directions contained in any Act with respect to the qualification, selection, balloting or distribution of jurors, the preparation of the jurors' book, the selecting of jury lists, or the drafting of panels from the jury lists, is a ground for impeaching or quashing a verdict rendered in criminal proceedings."

> "580. Nothing in this Act alters, abridges or affects any power or authority that a court or judge had immediately before the coming into force of this Act, or any practice or form that existed immediately before the coming into force of this Act, with respect to trials by jury, jury process, juries or jurors, except where the power or authority, practice or form is expressly altered by or is, inconsistent with this Act."

5.16 Practical problems.-

The operation of mixed jury creates a number of obvious practical difficulties, some of which have given rise to the jurisprudence summarized in the previous section of this chapter.[1] There are also problems which have not yet given rise to reported court decisions but which should be investigated by querying

1. The problems arising from the use of interpreters in trials by mixed jury have been reviewed in 4.29.

petitioners and judges. Unfortunately, we did not have the time to do so for this research project. However, two of these problems came vividly to light in 1964 during the Royal Commission of Inquiry into the Coffin Affair headed by Mr. Justice Roger Brossard. Wilbert Coffin was tried for murder at Percé, Que., in 1954. His request for an English-speaking jury was refused by the trial judge because in the traditional district where the trial took place, only about 15% of the population was English-speaking, and the judge decided, on that basis, that the ends of justice would not be served by excluding from the jury the other 85% of the population who were French-speaking. He therefore ordered the empanelling of a mixed jury. Nevertheless, in the district where the trial took place, it was extremely difficult, if not impossible, to find within a fourty miles from Percé enough qualified English-speaking persons for even a mixed jury. Mr. Justice Brossard observed [1] that if the territorial limits set by the Jury Act for selection of potentional jurors had been wider, an English-speaking jury could have been formed. To remedy such a situation and prevent it from recurring in other districts where it might arise, Judge Brossard suggested that if at all possible a unilingual jury ought to be preferred to a mixed one, and that the choice of the jury's language should be left entirely to the accused, whatever his language, since in Quebec both English and French are official. He further suggested that the law should be amended to provide for this and to remove from

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1. Rapport de la Commission d'Enquête Brossard sur l'Affaire Coffin, Nov. 27, 1964, Quebec Information and Publicity Office, Vol.II, 671-2.

the trial judge the burden of deciding whether or not, because of purely administrative reasons, the ends of justice would be better served by a mixed jury in preference to a unilingual one. At the present time, s. 535 (3) Cr.C. leaves it to the discretion of the trial judge. The undersigned cannot but agree with the recommendations of the Royal Commission. In addition, Mr. Justice Brossard noted that the law does not define clearly the extent to which a juror must know French or English to qualify as knowing that language and that the law does not specify that the jury's language must be that principally spoken by the accused. As a result, in Coffin's trial, two persons bearing English names, but speaking French rather than English, were chosen as supposedly English-speaking members of the mixed jury. Mr. Justice Brossard suggested that the Jury Act be amended to clarify these points.

D - CIVIL JURIES

5.17 Quebec Code of Civil Procedure.-

Quebec appears to be the only jurisdiction in Canada providing for a choice in the language of civil juries (as against criminal juries which are governed principally by federal law). The Quebec Code of Civil Procedure permits the parties to move for a jury composed entirely of French or English-speaking members, as the case may be, when all the parties speak one language or when one of them speaks neither French nor English, and for a mixed jury when the parties speak different official languages:

"436.(1) When the language of all the parties, is the French language or the English language, or when one of the parties speaks the French language or the English language, and the mother tongue of the other is neither French nor English, the judge, on the demand of one of the parties, may order that the jury be composed wholly of persons speaking the French language or the English language, according as the language of all or one of the parties is French or English.

(2) If one of the parties speaks the French and the other the English language, and one of them demands a jury de medietate linguae, or such demand is made by a corporation party to the suit, the judge shall cause the jury to be composed one-half of persons speaking the French language, and one-half of persons speaking the English language."

5.18 New Code of Civil Procedure.-

The existing Code of Civil Procedure will be replaced shortly by a new draft Code[1] which has not yet been proclamed in force. It provides for rights similar to those embodied in the present Code with the proviso that the criterion is "the language habitually spoken" by the parties. Furthermore, the decision is made with reference only to the language of physical persons and not of corporations. The relevant provisions are the following:

"333. A party who makes option for a jury trial must request it within fifteen days after the filing of the inscription for proof and hearing. The motion, stating the language habitually spoken by the parties, must be served at least five days before the date fixed for its presentation and must be accompanied by the deposit of the amount required by the rules of practice to meet the indemnity to which the jurors are entitled and other disbursements necessitated by this mode of trial."

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1. Bill 20, 13 Eliz. II, 1964, 3rd session, 27th Legislature.

"334. The court, if it grants the motion, decides at the same time whether the jury will be of the French language, of the English language or mixed, and refers the record to the cief justice; the latter, or an other judge designated by him, determines the date and place of the trial, by a judgment not subject to appeal, and orders the summoning of a jury."

"338. The jury is composed exclusively of persons speaking the French or the English language, if such is the language habitually spoken by all the parties. In all other cases, unless the parties have agreed on a jury composed exclusively of persons speaking the French or the English language, the jury is mixed, that is, composed one-half of persons speaking the French language and one-half of persons speaking the English language."

"339. The composition of the jury is determined without consideration of parties which are not physical persons. If all the parties are corporations and do not agree as to the composition of the jury, the court decides according to the circumstances, and no appeal lies from its decision."

"340. Between the thirtieth and fifteenth days before the date fixed for trial, the prothonotary prepares a panel of jurors by drawing by lot from the permanent jury list prepared under the Jury Act the names of thirty persons residing within twenty-five miles of the place of trial. The drawing is made in the manner provided in the Jury Act, regard being had for the language ordered by the court."

"351. One or two alternate jurors, depending upon whether the jury is of one language or mixed, may be summoned and sworn, if the judge so orders.

An alternate juror replaces any member of the jury who, before the end of the trial, becomes unable or incompetent to act. He is considered in all respects as a member of the jury, except that he will be dismissed as soon as the trial has ended, if his services have not been required."

"352. The two opposing parties are each entitled to challenge four jurors peremptorily. If the jury is mixed two of each language may be challenged.

Co-plaintiffs or co-defendants must unite to exercise such right of challenge."

"371. When the evidence has been compleged, the judge formulates for the jury the questions to which they must reply. The prothonotary writes them down and distributes copies to the judge, the jurors and the attorneys.

If the jury is mixed, the questions are drawn up in both languages."

The following comments from the commissioners are worthy of note:[1]

" The Commissioners have carefully studied all the aspects of the question but have been unable to come to a unanimous conclusion. Two of them recommend the abolition of jury trials while Commissioner Chaillies is of the contrary opinion. All three, however, are in agreement to suggest new rules for this mode of hearing in case the Legislature decides to retain it. In addition to simplifying considerably the procedure the adoption of the proposed texts would bring several changes to the existing law: the cases in which a trial by jury may be had are less numerous (Art.332); the right to a jury trial would no longer be absolute, with the Court always being able to refuse it because of the technical nature of the proof or for any other valid reason (Art. 337); the jurors, who would be only six in number, would only be able to decide questions of fact (Art. 338); and in deciding the composition of the jury, only the language of physical persons would be considered."

5.19 Jury Act also applies.-

Insofar as they are not modified by the Civil Code of Procedure, the provisions found in the Jury Act [2] governing the qualification , election and organization of juries are still applicable. However, for our purposes, they do not present any great interest.

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1. Printed on p.67a of the First reading of the draft Bill 20 of the new Code of Procedure.
2. 1964 R.S.Q., c.26.

5.20 Jurisprudence.-

The existing provisions of the Code of Civil Procedure have given rise to an abandoned jurisprudence. We summarize it herein:

(a) The position of corporation.- The right of a corporation to ask for a mixed jury is an absolute right[1] which it can waive it if sees fit to do so[2] . Any corporation, even a municipal corporation or city, has the right to demand a mixed jury[3]. However, it must exercise this right at trial; if it fails to do so, an appeal cannot remedy its default[4]. When amendments to the pleadings render ineffectual an interlocutory judgment on a motion for a jury, the type of jury granted can be changed. Thus, where a unilingual jury had been granted on a motion by a plaintiff who was not a corporation, and the plaintiff amended his declaration after that judgment, the defendant corporation set up a new defence to the amended declaration, and issues were subsequently joined for the second time. Thereupon the defendant corporation moved for a mixed jury. The trial judge dismissed the motion, but this was reversed on appeal because the amendments were, in effect,

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1. Banque Canadienne Nationale v. Ouellet (1933) 55 B.R. 114 at p. 115; Bégin v. Maurice Pollack Realty Co. et al [1963] R.P. 385 at p. 388 (C.S.); Beaulieu v. Montreal Street Railway Co. (1911) 12 R.P. 263 (C.S.)
2. Cie des Tramways de Montréal v. Crowe (1915) 24 B.R. 122, at p. 125, 126; Canadian Rubber Co. v. Karavokiris (1911) 12 R.P. 122 (B.R.); Les Frères de la Charité v. Martin (1909) 18 B.R.268
3. Cassidy v. City of Montreal (1898) 1 R.P. 535 (C.S.); Evans v. City of Montreal (1898) 1 R.P. 262 (C.S.);
4. Quebec Paving Co. v.St-Denis [1948] R.P. 32 at p. 36 (B.R.)

new contestations, annulling the first interlocutory judgment and allowing new procedures to be taken.[1] Also , where a corporation became a party to a suit after a unilingual jury had been granted to the other parties, and the corporation moved for a mixed jury, the motion was granted.[2]

A unilingual jury will try the case if a mixed jury is not demanded. The corporation is free to have a unilingual jury if it so wishes, and in this case, the opposite party, if it is not a corporation, cannot object if the jury speaks his language.[3] When a unilingual jury is to be impanelled in a case involving a corporation, the language of a corporation is determined by the language of its minutes [4] unless the corporation declares otherwise.[5] Where a corporation in a suit declared itself to be English-speaking and the other party was French-speaking, a mixed jury was ordered.[6] Much of this jurisprudence will lose its relevance under the new Code of Procedure which provides that the language of the jury is not to be determined with reference to the language attributed to a corporation.

(b) Unilingual juries.- When both parties speak the same language, the court must not grant a motion for a mixed jury, [7]

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1. Banque Canadienne Nationale v. Ouellet, supra.
2. McDonald v. Grand Trunk Railway Co. of Canada, and City of Montreal (1917) 18 R.P. 411 (C.S.)
3. Smith v. Mount Royal Hotel Co. Ltd. (1929) 32 R.P. 149 (C.S.); Les Frères de la Charité v. Martin, supra.
4. Smith v. Mount Royal Hotel Co. Ltd. supra.
5. Les Frères de la Charité v. Martin, supra.
6. Nihon v. Consolidated Theatres Ltd. (1939) 43 R.P. 102 at p.106 C.S.
7. Rodrigue v. Boulais (1933-34) 36 R.P. 430 (C.S.) Les Frères de la Charité v. Martin, supra.

(unless the party making it is a corporation). Where one of the parties speaks English or French, and the other speaks neither language, a unilingual jury will try the case.[1] However, where a party speaks one of the official languages and it is not his "mother tongue" the jurisprudence is divided over whether or not to grant a mixed jury in the event that the other party does not speak the same language. In Chicoine v. Gordon[2] spoke only French, and Gordon spoke English, but his mother tongue was Hebrew. Gordon moved for a mixed jury because Art. 436 C.P. provided for it where one party spoke French and the other English. However, the motion was denied because the judge held that any reference to the language of a party in Art.436 meant his mother tongue, and, therefore, in order for a mixed jury to be granted, the mother tongues of the parties had to be English and French. Since Chicoine's language was French, and Gordon's mother tongue was neither French nor English, the judge, in accordance with the first paragraph of Art. 436 granted an all-French jury. In Filiatrault v. Yaffe[3] , on the other hand, in circumstances similar to those in Chicoine v. Gordon, a mixed jury was granted, and the mother tongues and origins of the parties were held not to be criteria upon which the language of a party is to be determined; rather the criterion is which of the two official languages a party had adopted. As Rinfret, J., observed,

> "Interpréter autrement l'art. 436 serait porter une atteinte sérieuse aux droits que l'on a garantis aux néo-canadiens, lors de leur entrée au pays.

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1. Art.436, C.P. Gibeault v. Weiser,(1931-32) 34 R.P.422 (C.S.)
2. (1917) 18 R.P. 288.
3. [1953] B.R. 462.

"Parmi ces droits, ils ont certes acquis celui de se faire entendre devant les tribunaux dans leur langue d'adoption, soit le français soit l'anglais, à leur choix.

"Refuser l'exercice de ce droit et forcer, sans prétexte que sa langue maternelle ou d'origine n'est ni le français ni l'anglais, le néo-canadien de procéder dans une langue autre que celle qu'il a apprise - français ou anglais - constitueraient, à mon sens, une négation de droit que la Législature n'a pas pu sanctionner."[1]

The "parties" referred to in Art. 436 need not be opponents. If two co-plaintiffs or co-defendants speak different languages, then as long as those languages are English and French, a mixed jury will be granted.[2]

(c) Linguistic qualifications of jurors.- As for jurors, it is not necessary that their origins be inquired into in order to ascertain their linguistic qualifications - a knowledge of the language required is enough.[3] Thus, a French-speaking English-Canadian is considered a French-speaking juror and an English-speaking French-Canadian is considered an English-speaking juror. Familiarity with the language, not ethnic origin, is the key.

Moreover, in challenging an array in a mixed jury trial, the summoning of a juror as English - or French-speaking, when in fact he does not understand the language attributed to him, is not a ground of challenge if that juror is ordered aside. The recognized grounds of a challenge of the array are either partiality, fraud or wilful misconduct on the part of the officer by whom the panel was returned, or causes of nullity in the summoning of the

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1. Ibid., at p. 470.
2. Schneiderman and Lavigne v. Warhaft [1949] R.P. 35 (B.R.)
3. Bernier v. Montreal Light, Heat and Power Co.,(1911-12) 13 R.P. 116.

jurors, or in the making up of the lists or panel. The foregoing error does not constitute such ground.[1]

5.21 Practical problems.-

Both the existing Code of Procedure and the new Draft Code leave a number of practical difficulties unresolved. It is indicated by the jurisprudence cited in the preceding section there is still some doubt as to the composition of a jury in a trial in which the "mother tongue" of a juror is neither English nor French. There is no clear criteria as to the required linguistic knowledge to qualify a juror as speaking one or the other language. Nor does the present or contemplated legislation provide for the situation where all of the parties speak only foreign languages and none of them is corporation. No reported case has been found covering the latter situation, although the late Mr. Justice O. S. Tyndale, while he was Associate Chief Justice of the Quebec Superior Court, suggested the following solution.[2]

> "If all the parties are of a foreing language, the Judge shall determine, according to circumstances, whether the jury shall be composed of persons of one or other of the official languages or shall be de mediatate linguae. "

E- CONCLUSION

5.22 Need for clear legislation.-

Although the relative importance of a jury trial has greatly diminished civil cases and that most accused in criminal

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1. Montreal Street Railway v. Girard (1911) 21 B.R.121.
2. Amendments to Procedure regulating Trial by Jury in Civil Matters (1952) 12 R du B 265 at pp. 267-8.

cases waived their right to a jury trial when they are permitted to do so, the institution is still vital and remains as a potential save-guard for parties who want to use it. Consequently it is essential that clear legislation be adopted defining both the right and the manner in which it should be exercised as well as the precise criteria to be used in determining the language of jurors. At the present time we suggest that neither the Criminal Code nor the Quebec Code of Procedure are free from criticism on that account. Furthermore, if any thought be given to extending the right to mixed juries to areas other than Quebec and Manitoba, great care should be taken to find a solution to the practical difficulties which we have outlined.

CHAPTER VI

BILINGUALISM IN FEDERAL QUASI-JUDICIAL BOARDS AND COMMISSIONS

6.01 Introduction: Importance of quasi-judicial tribunals.-

The growth since the beginning of the century of administrative boards and commissions exercising quasi-judicial functions is a phenomenon with which political scientists and lawyers are familiar, but whose social significance is not yet apparent to many laymen. These administrative tribunals not only assume duties which are entrusted to them by modern social legislation - such as in the field of labour law or pensions- but also tend to take over the solution of traditional problems with which the ordinary courts have been unable to cope satisfactorily,(such as workmen's compensation). In other words we are witnessing both a new type of adjudication and the removal of classical adjudications from common law courts to more efficient and less formal administrative entities. We are not concerned herewith giving a value judgment on the change. The growth of administrative justice is a fact with which each citizen must learn to live whether he deplores or welcomes it. The one thing that is certain, however, is that more and more citizens appear before such boards and commissions or have their rights determined by such quasi-judicial bodies. And if past experience teaches us anything, it is that such confrontation will increase in the years to come.

6.02 The constitutional position.-

Administrative justice is so comparatively recent a development that it was never even envisaged by the Fathers of Confederation. The B.N.A. Act is completely silent on the subject. One will find nothing in it about the power to create such boards and commissions, the power of appointment to them or the jurisdiction over their procedure. The B.N.A. Act refers only to ordinary courts. Section 101 states:

> "101. The Parliament of Canada may, notwithstanding anything in this Act, from time to time, provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada."

However, this power to create courts for the administration of the laws of Canada does not extend to the creation of criminal courts since section 91 (27) specifically excludes the "Constitution of Courts of Criminal Jurisdiction". Parliament has exercised its power under s. 101 at least twice: by means of The Supreme Court Act[1] s. 3 of which describes the Supreme Court as "a general court of appeal for Canada, and . . . an additional court for the better administration of the laws of Canada", and by means of the Exchequer Court Act[2]. Theoretically, except for criminal courts and courts having jurisdiction over provincial matters, Parliament could create tribunals other than these two. Provided, of course, that such courts would be concerned only with applying laws which

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1. 1952 R.S.C. c. 259, and amendments.

2. 1952 R.S.C. c. 98, and amendments.

are within the legal competence of the Dominion.[1] All other courts, presumably, can be created by the provinces, subject, naturally, to s. 96 [2] of the B.N.A. Act and all the constitutional problems that result from it . Insofar as procedure is concerned,(a matter of great interest to us since the use of languages is normally a question of procedure,) the Constitution is not entirely clear. The only provisions to be found in the B.N.A. Act are the safeguard of federal jurisdiction over criminal procedure in s. 91 (27) and the recognition of provincial jurisdiction over civil procedure within provincial courts embodied in s. 92 (14). It would appear, however, that while Parliament could impose a code of procedure for all matters adjudicated under federal laws[3], the practice has been to take provincial procedure as it is and apply it. Short of parallel federal and provincial judicial structures, this may be the easiest method except, naturally, before such exclusively federal tribunals as the Supreme Court and the Exchequer Court. Where do these provisions leave administrative tribunals created by Parliament? Obviously, administrative boards and commissions are not the "additional Courts" contemplated in s.101 of the B.N.A. Act. They are not courts in the ordinary sense of the

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1. cf. Bora Laskin, Canadian Constitutional Law, 2nd ed., Toronto, 1960, p. 803.
2. "96. The Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick."
3. "No constitutional question arises in respect of the power of the Dominion to control and dictate the procedure in federal courts; and where a provincial court is seized of a "federal" cause of action the Dominion may, if it chooses, prescribe the procedure through which it is to be enforced therein.", Bora Laskin, op. cit., pp. 810-11.

word and were certainly not what the British Parliament had in mind when it enacted this provision. Obviously, this does not mean that Parliament cannot create administrative boards or tribunals since adequate authority could be found in the initial paragraph of s. 91 or even in the concluding paragraph. No one challenges federal jurisdiction any more than serious doubts are raised about provincial jurisdiction to create boards and commissions in areas of provincial concern (although, as we will see in 9.02, the constitutional position of provincial boards and commissions is somewhat beclouded by s. 96 of the B.N.A. Act giving to the Governor-General the right to appoint judges "of the Superior, District, and County Courts in each Province"). The importance of the distinction between ordinary courts and administrative courts, for our purposes, at least, is not so much in this area as in determining whether or not s. 133 of the Act applies to them. This section states (in part): "either the English or the French Language may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act." There is no doubt that s. 133 applies to courts created by the Parliament of Canada under s. 101. But, if administrative tribunals are not among the courts contemplated by the latter section, then s. 133 would not apply to them. This is our opinion. If s. 133 does not apply to administrative tribunals, it can be said that there is no constitutional requirement that federal boards or commissions exercising quasi-judicial power be bilingual. It is true, as our survey hereinafter described discloses, that all boards and commissions examined will give some measure of recognition to the right

of French-speaking litigants to use their mother tongue. But this practice is based on goodwill and common sense and not on any constitutional or legislative requirement.

6.03 Purpose of the present study.-

The purpose of the present chapter is essentially to study the extent to which the more important quasi-judicial federal boards and commissions give recognition to Canada's two official languages, and more particularly the manner in which they deal with French-speaking parties. Since French-speaking litigants are obviously a minority insofar as federal boards and commissions are concerned, the next chapter is devoted for purposes of comparison to a study of quasi-judicial tribunals in Quebec, where the situation is reversed.

6.04 Methods of research.-

The present chapter is based fundamentally on two questionnaires which were sent to the following sixteen boards and commissions (the initials between brackets are the ones used in the statistical tables found in this chapter):

1. Air Transport Board (A.T.B.)
2. Board of Broadcast Governors (B.B.G)
3. Board of Transport Commissioners (B.T.C.)
4. Canada Labour Relations Board (C.L.R.B.)
5. Canadian Pension Commission (C.P.C.)
6. Merchant Seamen Compensation Board (M.S.C.B.)
7. National Energy Board (N.E.B.)
8. National Parole Board (N.P.B.)

9. Tariff Board (T.B.)

10. Tax Appeal Board (T.A.B.)

11. Unemployment Insurance Commission (U.I.C.)

12. War Veterans Allowance Board (W.V.A.B.)

13. Restrictive Trade Practices Commission (R.T.P.C.)

14. National Harbours Board (N.H.B.)

15. International Joint Commission (I.J.C.)

16. St. Lawrence Seaway Authority (S.L.S.A.)

Of these sixteen, one (the Air Transport Board) did not reply to the questionnaire.

The National Harbours Board replied that it exercised no quasi-judicial function. So did the St. Lawrence Seaway Authority. The International Joint Commission replied that it was an international body originating in the Boundary Waters Treaty of 1909 between the United States and Canada and hence did not fall within the terms of reference of the Royal Commission on Bilingualism and Biculturalism. In a letter to the undersigned dated October 4, 1965, a copy of which is annexed hereto as appendix VI-A ,Mr. A.D.P. Heeney, Chairman, stated that the Commission is composed of a United States Section and a Canadian Section, each Section consisting of a Chairman and two Commissioners who areappointed by their respective Governments. Two of the three Canadian Commissioners are bilingual and the small administrative staff of the Canadian Section includes bilingual personnel. Mr. Heeney added:

> "It is our custom when conducting Hearings in Canada, and with the concurrence of our U.S. colleagues, to permit witnesses to give their testimony in either English or French and to accept briefs and statements in either language. It is also our custom when conducting Hearings in the Province of Quebec to give notice thereof in French as well as English."
>
> "You will appreciate that the Commissioners of the U.S. Section, in acceding to the wishes of the Canadian Commissioners in this respect, are doing so as an act of courtesy-- which we greatly appreciate."

In reply to a further inquiry about translation of French testimony, Mr. Heeney wrote (in a letter dated October 12, 1965, and a copy of which is annexed hereto with the entire correspondence as appendix VI-A):

> ". . . our arrangements are quite informal. Normally, when any witness wishes to give testimony in French, interpretation and, where need be, translation, is undertaken by the Canadian Section of the Commission. Furthermore, for hearings in the Province of Quebec, we provide for both English and French-speaking court reporters to take the verbatim.
>
> " When it comes to documentary evidence, it is customary for those submitting briefs in French to include an English translation. In my own experience, it has never been found necessary to retain the services of the Federal Government Bureau.
>
> " You will understand that these very informal arrangements for the convenience of witnesses rest ultimately upon the consent of the U.S. side of the Commission."

The present chapter is based on the replies of the following eleven boards and commissions:

1. Board of Broadcast Governors
2. Board of Transport Commissioners
3. Canadian Pension Commission

4. Merchant Seamen Compensation Board

5. National Energy Board

6. National Parole Board

7. Tariff Board

8. Tax Appeal Board

9. Unemployment Insurance Commission

10. War Veterans Allowance Board
11. Canada Labour Relations Board
12. Restrictive Trade Practices Commission.

6.05 Questionnaire.-

An initial questionnaire was sent to all sixteen boards and commissions listed in the foregoing paragraph. The questionnaire dealt with the linguistic qualifications of the members of the boards and commissions queried and with the language of proceedings before them. The first part of the questionnaire was designed to find out the mother tongue of each member of the administrative tribunal and his degree of knowledge of the other language. The second part of the questionnaire sought to find out in what language or languages hearings and proceedings were actually conducted; where French-language cases emanated from; what languages were used by members, witnesses and counsel; what the language of written submissions was; the language of decisions; the facilities for publication of the decisions and the availability of interpreters and stenographers. A copy of this questionnaire is annexed hereto as appendix VI-B . Subsequently a further questionnaire was sent to the twelve boards and commissions

which had replied to the first questionnaire with a view to finding out whether the language practices indicated in the reply were based on statutory provisions or merely on custom. A copy of this short questionnaire is annexed hereto as appendix VI-C .

6.06 Shortcomings of the questionnaires.-

We wish to recommend caution in accepting some of the figures provided in the replies. Indeed the degree of knowledge by board members of the other language was not measured by any objective test, but is an estimate by the official replying to the questionnaires. We have no doubt that these replies were given honestly, but they are no better than estimates by an observer whose judgment we had no way of testing. This does not mean that the replies are not informative. But we cannot claim scientific accuracy. We believe that at best our statistics are valid approximations.

6.07 Linguistic qualifications of members of quasi-judicial boards.-

(a) Mother tongue.- In the following table VI-1 will be found a breakdown of the mother tongue of the total of 81 members of the 12 boards and commissions surveyed. The table indicates that the mother tongue of 79% of all members is English.

TABLE VI-1

	Board	English	French	Total
1.	B.B.G.	10	2	12[1]
2.	B.T.C.	5	1	6
3.	C.P.C.	14	2	16
4.	M.S.C.B.	3	0	3
5.	N.E.B.	4	1	5
6.	N.P.B.	3	2	5
7.	T.B.	5	2	7
8.	T.A.B.	4	2	6
9.	U.I.C.	2	1	3
10.	W.V.A.B.	6	1	7
11.	C.L.R.B.	6	2	8[2]
12.	R.T.P.C.	2	1	3
TOTALS:		64 (79%)	17 (21%)	81 (100%)

(b) Knowledge of French by English-speaking members.- Questions 4, 5 and 6 were designed to determine whether English-speaking members either read, wrote or spoke French well, fairly well, with difficulty or not at all. The results can be found in the following table VI-2.

TABLE VI-2

Knowledge of French by English-speaking members.

The following abbreviations have been used:
a: well
b: fairly well
c: with difficulty
d: not at all

	Board	Read French				Write French				Speak French			
		a	b	c	d	a	b	c	d	a	b	c	d
1.	B.B.G.	no reply				no reply				no reply			
2.	B.T.C.	0	2	3	0	0	1	1	3	0	0	2	3
3.	C.P.C.	1	1	7	5	1	1	1	11	1	1	2	10

[1] The board actually consists of 15 members, but at the time of reply to (cont'd next page)

TABLE VI-2 (cont'd.)

	Board	Read French				Write French				Speak French			
		a	b	c	d	a	b	c	d	a	b	c	d
4.	M.S.C.B.	0	2	1	0	0	0	0	3	0	0	3	0
5.	N.E.B.	0	3	1	0	0	0	3	1	0	0	3	1
6.	N.P.B.	3	0	0	0	0	0	3	0	0	3	0	0
7.	T.B.	1	1	1	2	0	1	0	4	1	0	1	3
8.	T.A.B.	0	0	0	4	0	0	0	4	0	0	0	4
9.	U.I.C.	0	0	1	1	0	0	0	2	0	0	0	2
10.	W.V.A.B.	1	0	0	5	1	0	0	5	1	0	0	5
11.	C.L.R.B.	0	3	2	1	0	0	3	3	0	0	4	2
12.	R.T.P.C.	0	2	0	0	0	0	1	0	0	1	1	0
TOTALS:		6	14	16	18	2	3	12	36	3	5	16	30

It appears, thus, that of the 54 English-speaking members covered by these replies out of a total of 64, <u>an extremely small number claim to either read, write or speak French, either well or fairly well.</u> Thirty-six, 66.6% claim that they could not write French at all and 12, or 22.2%, that they could write it with difficulty. The percentages were almost the same for spoken knowledge of French. It is only with respect to reading French that the results are a little more positive, with a little over 10% claiming to read French well, another 25% reading fairly well, 30% reading it with difficulty, and the rest not reading it at all. Subject to the reservations indicated in 8.06 it is evident that some members believe they have some reading knowledge of French, although they can neither speak nor write the language. It is obvious that an ability to write may not be essential to the conduct of hearings in French, but certainly no English member

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footnote 1. cont'd. from previous page:
the questionnaire, there were 3 vacancies.
2.(cont'd. from previous page): One vacancy at time of reply.

could hope to conduct hearings in French without at least speaking the language.

(c) Knowledge of English by French-speaking members.-

Of the 17 French-speaking members surveyed, 15 read, wrote and spoke English well and 2 fairly well, as appears from table VI-3:

TABLE VI-3

Knowledge of English by French-speaking members.

The following abbreviations have been used:
a: well
b: fairly well
c: with difficulty
d: not at all

	Board	Read English				Write English				Speak English			
		a	b	c	d	a	b	c	d	a	b	c	d
1.	B.B.G.	2	0	0	0	2	0	0	0	2	0	0	0
2.	B.T.C.	1	0	0	0	1	0	0	0	1	0	0	0
3.	C.P.C.	2	0	0	0	2	0	0	0	2	0	0	0
4.	M.S.C.B.	0	0	0	0	0	0	0	0	0	0	0	0
5.	N.E.B.	1	0	0	0	1	0	0	0	1	0	0	0
6.	N.P.B.	2	0	0	0	2	0	0	0	2	0	0	0
7.	T.B.	2	0	0	0	2	0	0	0	2	0	0	0
8.	T.A.B.	0	2	0	0	0	2	0	0	0	2	0	0
9.	U.I.C.	1	0	0	0	1	0	0	0	1	0	0	0
10.	W.V.A.B.	1	0	0	0	1	0	0	0	1	0	0	0
11.	C.L.R.B.	2	0	0	0	2	0	0	0	2	0	0	0
12.	R.T.P.C.	1	0	0	0	1	0	0	0	1	0	0	0
TOTALS:		15	2	0	0	15	2	0	0	15	2	0	0

It appears, thus, that all French-speaking members are fluently bilingual or nearly fluently as against less than 10% of the English-speaking members.

6.08 Conduct of Proceedings.-

(a) Division into linguistic panels.-

In trying to find out whether on occasion administrative tribunals would delegate their members either singly or in a group to hear cases according to language, 9 boards replied that they never did so. The Board of Transport Commissioners stated that it did so "sometimes". The Canadian Pension Commission indicated that it resorted to this method "often". Only the Restrictive Trade Practices Commission stated that it did so "always".

Of the 10 boards replying to the question of whether they ever divided to hear cases in English or in French, 8 said that they never did so; the Tariff Board stated that it did so "sometimes"; and the Tax Appeal Board said that it did so "always".

(b) Language of proceedings before the boards.- When asked whether proceedings before them were conducted in both English and French, 9 boards replied in the affirmative, the War Veterans Allowance Board and the Merchant Seamen Compensation Commission, stating that all proceedings before them were in English. The Parole Board stated that it did not have the need to divide since it does not normally hear counsel or conduct hearings as such. However, although 9 boards out of 12 stated that they conducted hearings or proceedings in both languages, these answers should not deceive one into thinking that there is a high percentage of cases conducted in French.[1] As will appear from the table VI-4, only 7.3% of all cases are conducted in French, practically all of them emanating from the Province of Quebec.

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1. See annex VI-D for the practices of the Appeal Boards of the Civil Service Commission.

TABLE VI-4

Percentage of cases conducted in either language:

	Boards	English	French	Source
1.	B.B.G.	75%	25%	98% P.Q.
2.	B.T.C.	85%	15%	P.Q.
3.	C.P.C.	91%	9%	95% P.Q.
4.	M.S.C.B.	100%	---	none
5.	N.E.B.	98%	2%	P.Q.
6.	N.P.B.	n/a	n/a	P.Q.
7.	T.B.	95%	5%	P.Q.
8.	T.B.A.	92%	8%	P.Q.
9.	U.I.C.	99%	1%	P.Q.
10.	W.V.A.B.	100%	---	P.Q.,N.B.,N.S.,Manitoba
11.	C.L.R.B.	90%	10%	P.Q.
12.	R.T.P.C.	95%	5%	P.Q.
	AVERAGE:	92.7%	7.3%	

Of the small percentage of cases heard in French, only 3 boards stated that some of them came from outside Quebec. The Board of Broadcast Governors said that 2% of the 25% of cases they heard in French emanated from outside Quebec; the Canadian Pension Commission estimated that 5% of the 9% of cases it conducted in French came from provinces other than Quebec; the War Veterans Allowance Board stated that a few French-language cases came from the Maritime Provinces and from Manitoba, but had no percentages.

(c) Bilingualism before administrative tribunals.- As a rule cases are conducted in English alone or in French alone. There seems to be relatively little bilingualism. In reply to the question of whether both languages were ever used in the course of a single hearing before the board by members, witnesses or counsel, we obtained estimates which, with all due reservations, indicate that the English participants seldom stray from their mother tongue. In fact, from some of the foregoing tables, we suspect that most of the bilingualism must come from French-speaking members or counsel. The results are tabulated in the following table VI-5 :

TABLE VI-5

Bilingualism before administrative boards: a: often
b: sometimes
c: rarely
d: never

	Boards	by members				by witnesses				by counsel			
		a	b	c	d	a	b	c	d	a	b	c	d
1.	B.B.G.	x				x							x
2.	B.T.C.		x				x				x		
3.	C.P.C.	x				x				x			
4.	M.S.C.B.			x				x				x	
5.	N.E.B.		x				x				x		
6.	N.P.B.		n/a				n/a				n/a		
7.	T.B.			x				x				x	
8.	T.B.A.				x				x			x	
9.	U.I.C.			x			x				x		
10.	W.V.A.B.		n/a				n/a				n/a		
11.	C.L.R.B.	x				x				x			
12.	R.T.P.C.			x				x				x	
TOTALS:		2	3	3	2	3	3	2	2	2	2	4	2

(d) Language used by counsel appearing before administrative boards.- As another test of bilingualism we requested information as to the language used by French-speaking and English-speaking counsel. Of 8 boards replying, 4 stated that French-speaking counsel usually pleaded in French, and 4 stated that they did so "sometimes". Five boards indicated that French-speaking counsel usually spoke in English and 3 stated that English was used only "sometimes". The converse question about English-speaking counsel produced 9 replies: 6 that English was always used, and 3 that it was used usually. Four boards stated that English-speaking counsel never used French, and 3 that they used French "sometimes". All these figures are subject to the reservations outlined in 8.06, but confirm the impression that bilingualism is confined to French-speaking participants in administrative hearings.

(e) Written submissions.- In inquiring into the language of written submissions and documents presented to administrative tribunals, we elicited that an average of 91.4% are entirely in English and only 8.6% in French. The results are tabulated in table VI-6:

TABLE VI-6

Written submissions:

	Boards	in English	in French
1.	B.B.G.	75%	25%
2.	B.T.C.	90%	10%
3.	C.P.C.	95%	5%
4.	M.S.C.B.	100%	---
5.	N.E.B.	98%	2%
6.	N.P.B.	75%	25%
7.	T.B.	95%	5%
8.	T.B.A.	92%	8%
9.	U.I.C.	98%	2%
10.	W.V.A.B.	94%	6%
11.	C.L.R.B.	90%	10%
12.	R.T.P.C.	95%	5%
AVERAGE PERCENTAGE:		91.4%	8.6%

The importance of the above-mentioned figures is confirmed by the answers to our question as to the relationship between the language of proceedings and the language of prior written submissions. Out of 11 replies received, 3 boards stated that the language of the proceedings was always the same as that of the written submissions; 5 stated that this was the case "almost always"; and the other 2 that this was "usually" so.[1]

(f) Language of decisions.- Ten boards out of 12 stated that a single decision was delivered in each case. Two boards said that there were occasionally dissenting opinions. When we inquired about the language of the single decision which

[1] The Canada Labour Relations Board stated: "This question cannot be answered in the form asked. Written replies or submissions are dealt with in writing in the language used in filing them. Oral proceedings are conducted in English or French, with translators."

appears to be the practice, we discovered that 89.1% of all decisions are rendered in English, and only 10.9% in French. The results are tabulated in table VI-7:

TABLE VI-7

Language of decisions:

	Boards	in English	in French
1.	B.B.G.	50%	50%
2.	B.T.C.	---	---
3.	C.P.C.	91%	9%
4.	M.S.C.B.	100%	---
5.	N.E.B.	98%	2%
6.	N.P.B.	75%	25%
7.	T.B.	95%	5%
8.	T.A.B.	92%	8%
9.	U.I.C.	100%	---
10.	W.V.A.B.	94%	6%
11.	C.L.R.B.[1]	90%	10%
12.	R.T.P.C.	95%	5%
AVERAGES:		89.1%	10.9%

The above table does not include the Board of Transport Commissioners. In replying to this question this Board stated: "Due to the complexity of the cases heard, the number of exhibits submitted which have to be verified by expert officers of the Board, decisions are rarely delivered from the Bench; when so delivered, they are delivered in the language used during the course of the hearing." In replying to questions 12 and 13 the Board stated that approximately 85% of cases it heard were in English and the remainder 15% in French. If we took these to be representative figures, and added them to the figures tabulated in table VI-7, it would slightly decrease the percentage

1. The Canada Labour Relations Board stated: "Decisions are drafted in English and are translated, and issued to the parties in French when this language is used by them."

of decisions in English and slightly increase that in French.

In reply to the next question, 11 boards stated that decisions are always published in the language in which they are rendered, and 1 stated that this is almost always the case. When queried about translation of decisions into the other language, 6 boards out of 8 replying stated that French decisions are always translated into English for publication, and 2 that this was not the case. With respect to English-language decisions, 8 boards stated that they are translated into French for publication and 4 that this is not done.

(g) Increase in French cases.- We tried to determine whether there had been an increase in cases heard in French during the last three years. Eight boards stated that they had not noticed any increase and 2 estimated the increase at about 5%. The Canada Labour Relations Board, however, estimated the increase at 50%.

(h) Interpreters.- Section 2 (g) of the Canadian Bill of Rights enacts that no federal law shall be construed or applied so as to "deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved, or in which he is a party or a witness, before a ... commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted."[1] The replies to our question concerning the use of interpreters by federal quasi-judicial boards and commissions were not entirely satisfactory. Only 5 boards replied fully. Of these, 4 estimated that they used interpreters in anywhere from .01% to 5% of the times. The Board of Broadcast Governors stated that it employed a simultaneous translation system at all its hearings and found it highly satisfactory after an awkward initial period.

1. The Immigration Regulations, P.C. 1962-3, Canada Statutory Orders and Regulations, 1962, p. 141, s. 5, provide that whenever an inquiry is held by a Special Inquiry Officer under the Immigration Act, and the person

(cont'd.)

The Labour Relations Board estimated it used interpreters from English to French in 2% of the cases, and from French to English in 10% of the cases.

We have drawn attention in 4.27 to the lack of qualifications of many interpreters who operate in Canadian courts and boards or commissions and particularly to the case of Nishi vs. M.N.R.[1] involving the Tax Appeal Board.

(i) Bilingual stenographers.- Since a pre-requisite for conducting hearings in both languages is the availability of stenographers competent in each language, a specific question was directed to this problem. Most boards indicated that they either had bilingual stenographers or had access to independent stenographic services when the need arose.

footnote 1. cont'd. from previous page:

being examined "does not understand or speak the language in which the proceedings are being held" the presiding officer shall immediately obtain to assist such person "without charge" an interpreter "who is conversant in a language understood by the person being examined".

1. (1963) 31 Tax ABC/220.

6.09 This limited bilingualism is based on custom and not on law.- We noted in 6.02 that s. 133 of the B.N.A. Act, which allows the use of both languages in federal courts, does not apply to quasi-judicial boards and commissions.

Nevertheless, as appears from the foregoing paragraphs, there is a measure of bilingualism which exists de facto. Since none of the statutes or regulations governing these boards refer to linguistic usage, we inquired, by means of a second questionnaire (attached hereto as appendix VI-C), whether the practice of allowing the use of two languages was based on custom. Of the 12 boards and commissions queried, all of them stated that:

1. Their governing statutes did not contain any provision regulating the languages in hearings or submissions;
2. That they had no regulations governing the use of languages in hearings or submissions;
3. That they had not themselves issued any rules, regulations or directives governing the use of languages in hearings or submissions; and
4. That the use of two languages in hearings before, or submissions to them was governed by unwritten custom.

In other words, the de facto application by federal boards and commissions of the principle recognized by s. 133 of the B.N.A. Act is based on custom or past practice and from the comments

accompanying the replies, it would appear to depend on pragmatic considerations only. All the replies indicated that French could be used at the option of the parties and that in such event stenographic facilities would be provided. Some boards also provide translating services (except the Board of Broadcast Governors which has simultaneous interpretation). The Tax Appeal Board stated that "the language which would prove the most expeditious to the parties involved in the appeal is the one used by the Board". Only the Board of Transport Commissioners stated that its recognition of bilingualism was based "indirectly" on s. 133 of the B.N.A. Act.

The National Parole Board stated:

> "The Board does not have hearings as such, but we receive many letters from lawyers, inmates and others on behalf of inmates in the French language and these are answered in French and the Board Members can read French.
>
> "If and when we should ever start having parole hearings for the inmates in the institutions, they will be conducted in the French language if the inmate is French speaking and if he so desires."

The Merchant Seamen Compensation Commission stated:

> "Almost all cases coming before the Board are from English speaking claimants. In the few instances when the language of the claimant is not English, translation services are used as required. Languages occasionally used, other than English and French, include Greek, Italian, Spanish and German."

Reference should also be made to the explanations given or comments made in replying to the first questionnaire and which are quoted in the next section.

6.10 General comments by the respondents.-

A number of comments made by the respondents to the first questionnaire are worth noting. The success experienced by the Board of Broadcast Governors with simultaneous interpretation has already been referred to and deserves further study with a view to spreading it to other quasi-judicial tribunals and perhaps to ordinary courts of law. The National Energy Board stated that it was its policy to translate those of its decisions which might affect citizens in French-speaking parts of Canada, and in particular in Quebec. The Board added:

> "Where an application originates, for example, in the Province of Quebec, reporting and translating arrangements are made for the hearing so that evidence may be given in either language. However, many French-speaking witnesses, testifying on technical matters, are bilingual and choose to express themselves in English so as to avoid any possible distortion of their evidence arising from translation from French into English."

The National Parole Board does not conduct hearings, but makes its decisions on the basis of the written records prepared for its consideration in various parts of the Country. It stated that language was not a serious problem, since all members of the Board speak, read and write English fluently and the English-speaking members "can read French". It added:

> "The submissions are usually prepared in English by a bi-lingual officer, although the information in the file may be in the French language."

The Tariff Board stated:

> "Nearly all the Board's work is carried on in English.
>
> "In an inquiry on a Reference parties are heard in the language of their choice; French is very rarely used.

"In appeals the appellant is occasionally heard in French if he so chooses. The respondent (The Deputy Minister of National Revenue represented by counsel from the Department of Justice) is merely told of the language that the appellant is going to use. No interpreters are employed.

"The Board generally sits in panels of three; where the proceedings are to be wholly or in part in French the panels are constituted accordingly."

The Restrictive Trade Practices Commission made the following comments:

"The Restrictive Trade Practices Commissions has been in existence since 1952. Where witnesses are to be examined in the course of investigation they are subpoenaed before a member of the Commission, who acts as presiding officer for the examination. Where it appears that a witness prefers to testify in French the examination is presided over by the French speaking member and the record is taken in French. These examinations usually take place in the Montreal area.

"In only one inquiry has the evidence been predominantly in French. In that case, in September 1962, the Statement of Evidence (which is a summary of the case of the Director of Investigation and Research under the Combines Act) was submitted to the Commission in French and for the convenience of counsel for the parties translated into English. At the hearing before the full Commission argument was heard in both English and French. The report of the Commission in this case was written in French in the first instance.

"In one other case, although all evidence and argument was in English the report was also in the first instance written in French. All reports are presented to the Minister of Justice in both languages and are published at the same time in both languages.

"In a recent inquiry conducted in English a witness wished to testify before the Commission in French. The counsel who called him was unable to question him in French and at counsel's request an interpreter was provided."

The Canada Labour Relations Board stated:

"The language practices of the Board are constant in all cases. Parties appearing before the Board use the language of their choice and translators are made available to assist the parties and those members of the Board who are not bilingual."

The Canadian Pension Commission stated that applicants and their witnesses are heard in the language of their choice.

6.11 Conclusions.-

Our conclusions can be summarized as follows:

(a) There is no constitutional or legislative provision requiring federal administrative boards or commissions to be bilingual, and when they are so, it is by custom.

(b) Of the personnel of the boards and commissions surveyed, 79% are English-speaking and very few of them bilingual; 21% are French-speaking and all of them are fluently bilingual.

(c) 92.7% of all cases are conducted in English, and only 7.3% in French.

(d) Cases are always, or almost always, conducted in the language of written proceedings submitted to the boards and 91.4% of all written proceedings are in English.

(e) 89.1% of all decisions rendered by federal administrative boards are in English, although they are then frequently translated into French as the need arises.

(f) All boards and commissions claimed to be willing to provide bilingual stenographic and/or translation services when required to enable parties to use their mother tongue. The Merchant Seamen Compensation Commission even indicated that it sometimes held hearings in Greek, Italian, Spanish and German.

APPENDIX VI-A (1)

INTERNATIONAL JOINT COMMISSION

COMMISSION MIXTE INTERNATIONALE

OTTAWA 4, October 4, 1965.

Claude-Armand Sheppard, Esq.,
Royal Commission on Bilingualism and
Biculturalism,
Legal Research,
Suite 612, Place Victoria,
800 Victoria Square,
Montreal, P.Q.

Dear Mr. Sheppard,

I feel I should make some explanation on the position of this Commission in response to your circular letter of September 27 addressed to me as Canadian Chairman of the IJC and enclosing a questionnaire in relation to the legal research of the Royal Commission. This is the questionnaire prepared for "federal quasi-judicial tribunals" and, as you say, for certain "analogous provincial boards".

The position of the International Joint Commission is quite different from that of authorities constituted by the Government of Canada or by the Government of any Province of Canada, inasmuch as the IJC is an international body originating in a treaty between the United States and Canada (the Boundary Waters Treaty of 1909). It is composed of two Sections, the United States Section and the Canadian Section, each Section consisting of a Chairman and two Commissioners who are appointed to it by their respective governments. Each Section has a professional and administrative staff consisting of its own nationals.

The IJC is thus in fact and in law an <u>international</u> body and acts as such within the jurisdiction conferred upon it by statutes of the United States and Canada consequent upon the Treaty. It is divided into the two Sections for administrative convenience but it acts as a single authority.

For these reasons it is not, in my opinion, appropriate that the Canadian Section of the IJC should be requested by a Canadian Royal Commission to participate in the inquiry which the B & B Commission is directing to Canadian agencies; nor would our response to your questionnaire constitute relevant evidence.

....2

Mr. Claude-Armand Sheppard - 2 - October 4, 1965.

Having said this, however, I am quite willing that you and the Royal Commission should be made aware informally of our situation and practice in relation to that official language of Canada which we do not share with the United States. Two of the three Canadian Commissioners are bilingual and our small staff includes bilingual personnel. It is our custom when conducting Hearings in Canada, and with the concurrence of our U.S. colleagues, to permit witnesses to give their testimony in either English or French and to accept briefs and statements in either language. It is also our custom when conducting Hearings in the Province of Quebec to give notice thereof in French as well as English.

You will appreciate that the Commissioners of the U.S. Section, in acceding to the wishes of the Canadian Commissioners in this respect, are doing so as an act of courtesy--which we greatly appreciate.

I thought you might be interested in our situation and I am sending a copy of this letter to Mr. Neil Morrison, the Secretary of your Commission.

Yours sincerely,

(sgd.) A.D.P. Heeney.

A.D.P. Heeney,
Chairman.

P.S.--I find that the earlier questionnaire on Subordinate Legislation was completed some time ago by the Staff of this Section and sent forward. This, too, must be taken to have been done under the reserve made explicit in the first paragraphs of this letter of mine.

(sgd.) A.D.P.H.

October 6, 1965.

A. D. P. Heeney, Esq., Q.C.,
Chairman,
The International Joint Commission,
75 Albert Street,
OTTAWA, Ontario.

Dear Mr. Heeney,

I thank you for your letter of October 4, 1965, relating to the questionnaire I sent you previously as Canadian Chairman of the International Joint Commission.

I fully appreciate your reasons for feeling that the International Joint Commission is beyond the scope of the Royal Commission on Biculturalism, and I thank you for the information which you were so kind as to give me with relation to the use of English and French for the Commission.

There is one poing, however, on which I would be grateful for further information. This concerns the translation of French into English. When a witness is being heard in French by the Commission, is it the practice of the Commission to hear him in French, or is this testimony translated into English by an official translator attached to the Commission, or specially hired for the occasion?

Also, when briefs or documentary evidence are submitted to the Commission in the French language, is it customary to have them translated by a member of your staff or by translators with the Central Translation Bureau in Ottawa?

Thanking you for your courtesy and consideration in this matter, I am

Yours sincerely,

CLAUDE-ARMAND SHEPPARD

APPENDIX VI-A (4)

INTERNATIONAL JOINT COMMISSION

COMMISSION MIXTE INTERNATIONALE

OTTAWA 4, October 12, 1965.

Claude-Armand Sheppard, Esq.,
Royal Commission on Bilingualism and Biculturalism,
Legal Research,
Suite 612, Place Victoria,
800 Victoria Square,
Montreal, P.Q.

Dear Mr. Sheppard,

Further to my letter of October 4th and in reply to the specific questions in yours of October 6th, our arrangements are quite informal. Normally, when any witness wishes to give testimony in French, interpretation and, where need be, translation, is undertaken by the Canadian Section of the Commission. Furthermore, for hearings in the Province of Quebec, we provide for both English and French-speaking court reporters to take the verbatim.

When it comes to documentary evidence, it is customary for those submitting briefs in French to include an English translation. In my own experience, it has never been found necessary to retain the services of the Federal Government Bureau.

You will understand that these very informal arrangements for the convenience of witnesses rest ultimately upon the consent of the U.S. side of the Commission.

Yours sincerely,

(sgd.) A.D.P. Heeney.

A.D.P. Heeney,
Chairman.

QUESTIONNAIRE TO FEDERAL QUASI-JUDICIAL TRIBUNALS

A - MEMBERS OF THE BOARD:

1. Please indicate the total number of members of the Board: _____

2. Please indicate the number of members of the Board whose mother tongue is English: _____

3. Please state the number of members of the Board whose mother tongue is French: _____

4. Please state the number of English-speaking members who read French:

   a) Well _____
   b) Fairly well _____
   c) With difficulty _____
   d) Not at all _____

5. Please state the number of English-speaking members who write French:

   a) Well _____
   b) Fairly well _____
   c) With difficulty _____
   d) Not at all _____

6. Please state the number of English-speaking members who speak French:

a) Well _____

b) Fairly well _____

c) With difficulty _____

d) Not at all _____

7. Please state the number of French-speaking members who read English:

a) Well _____

b) Fairly well _____

c) With difficulty _____

d) Not at all _____

8. Please state the number of French-speaking members who write English:

a) Well _____

b) Fairly well _____

c) With difficulty _____

d) Not at all _____

9. Please state the number of French-speaking members who speak English:

a) Well _____

b) Fairly well _____

c) With difficulty _____

d) Not at all _____

B - THE LANGUAGE OF PROCEEDINGS BEFORE THE BOARD.

10. Is the "hearing examiner system" (this is when a single member of the Board is detailed to hear a case according to language) ever used by your Board?

a) Yes - always _____

b) Yes - often _____

c) Yes - sometimes _____

d) No. _____

If "No", does the Board ever divide to hear cases in English or in French?

a) Always _____

b) Often _____

c) Sometimes _____

d) Never _____

11. Are proceedings before the Board conducted in both English and French?

a) Yes _____

b) No _____

12. What percentage of the cases before the Board are conducted in English? _____%

13. What percentage of the cases before your Board are conducted in French? _____%

14. From what regions of Canada do the French language cases come? (Please give details)

15. Are both languages ever used in the course of a single hearing before the Board i) by members, ii) by witnesses, iii) by counsel?

i) By members:

a) Yes - often _____

b) Yes - sometimes _____

c) Yes - rarely _____

d) No - never _____

ii) By witnesses:

a) Yes - often _____

b) Yes - sometimes _____

c) Yes - rarely _____

d) No - never _____

iii) By counsel:

a) Yes - often _____

b) Yes - sometimes _____

c) Yes - rarely _____

d) No - never _____

16. (i) When French-speaking counsel are before the Board, do they plead in French or in English?

a) Always in French _____

b) Usually in French _____

c) Sometimes in French _____

d) Never in French _____

e) Always in English _____

f) Usually in English _____

g) Sometimes in English _____

h) Never in English _____

(ii) When English-speaking counsel are before the Board, do they plead in English or French?

a) Always in English _____

b) Usually in English _____

c) Sometimes in English _____

d) Never in English _____

e) Always in French _____

f) Usually in French _____

g) Sometimes in French _____

h) Never in French _____

17. What percentage of the written submissions and documents relative to cases before the Board are in English and in French?

a) In English _____%

b) In French _____%

18. Are proceedings before the Board conducted in the language of the written submissions and documents?

a) Always _____

b) Almost always _____

c) Usually _____

d) Half the time, or less _____

19. Does each member of the Board write a separate decision or does the Board deliver a single decision only?

a) Each member writes a decision _____

b) Single decision _____

20. What percentage of the decisions of the Board are delivered in English and in French?

a) In English _____%

b) In French _____%

21. How often are the decisions of the Board published in the language in which they are delivered?

a) Always _____

b) Almost always _____

c) Usually _____

d) Half the time, or less _____

22. Are the decisions of the Board which are delivered in French translated into English for publication?

Yes _____

No _____

23. Are the decisions of the Board which are delivered in English translated into French for publication?

Yes _____

No _____

24. Has there been an increase in the number of cases before your Board which have been heard in French during the last 3 years?

a) No _____

b) Yes _____

If "Yes", what percentage do you estimate this increase represents over the previous 3 years?

_____%

25. Please state in what percentage of the cases before your Board an interpreter is needed to translate a) English to French, b) French to English.

a) English to French _____%

b) French to English _____%

26. Does the Board have stenographers capable of preparing the record a) in English, b) in French, c) in both languages?

a) In English? Yes _____ No _____

b) In French? Yes _____ No _____

c) In both languages? Yes _____ No _____

27. (This is a general question inviting comments)

Does the importance and the generality of the decision to be rendered affect the procedures of the Board in individual hearings? And if so, how does this affect the language practices of the Board and of those appearing before it?

APPENDIX VI-C (1)

SECOND QUESTIONNAIRE SENT TO ELEVEN BOARDS AND COMMISSIONS WHICH REPLIED TO THE FIRST QUESTIONNAIRE:

November 8, 1965.

Dear Sir:

In the course of the summer of this year you were kind enough to reply to a questionnaire on language practices in hearings conducted by your Board (or Commission), which I sent you on behalf of the Royal Commission on Bilingualism and Biculturalism.

In order to complete our report, we require the following additional information:

1. Does the Statutes governing your Board (or Commission) contain any provision governing the use of language in hearings before or submissions to you?

Yes _____ No _____

2. Are there any regulations governing the use of language in hearings before or submissions to you?

Yes _____ No _____

3. Has your Board (or Commission) itself issued any rules, regulations or directives governing the use of language in hearings before or submissions to you?

Yes _____ No _____

. . ./2

APPENDIX VI-C (2)

November 8, 1965.

4. If the answer to the foregoing 3 questions is "no", is the use of languages in hearings before or submissions to your Board (or Commission) governed by unwritten custom?

Yes _____ No _____

5. If the answer to questions 1, 2 and 3 is "yes", please enclose a copy of the relevant provisions.

6. Do you have any further comments?

Yours truly,

CLAUDE-ARMAND SHEPPARD

APPEAL PROCEDURE FOR APPEAL BOARD OF THE CIVIL SERVICE COMMISSION

In the present Appendix we summarize briefly the relevant portions of an interview conducted on May 26, 1965 by a member of the Research staff of the Royal Commission with Mr. Vinokur, Chief of the Appeals Division of the Civil Service Commission.

Under the Civil Service Act[1] civil servants have a right to appeal against promotions, transfers, suspensions, refusals of increases or similar decisions which they consider unjust. These appeals must be in writing and are heard by a three-man appeal board composed of Civil Service Commission officers. The appeal boards only make recommendations to the Commission which makes the final decision except in cases of dismissal which are decided by the Cabinet. Members of the appeal board are ad hoc appointees by the Civil Service Commission. The personnel of the appeal board changes. Originally hearings were conducted in the language in which the written appeal came. But, when it was realized that appellants did not always write in the language with which they were more familiar, an effort was made to ascertain in which language the appellant really preferred to have his case heard.

Reports are prepared in the language of the hearing. Quotations from the evidence are in the original language used. The past practice of translating decisions which were rendered in a language different from that of the appellant has been abandoned. When an official needs a copy of the appeal board's report in a different language, an unofficial

1. 1960-61 Eliz. II, c. 57, s. 70.

translation is prepared. A serious effort appears to be made thus to respect the language of the appellant.

The appeal boards hear approximately a thousand appeals a year from all over Canada. Ten to fifteen percent of those emanating from the Ottawa area, where half of Canada's civil servants work, are conducted in French. In the Montreal area, the figure is 90%. Montreal appeals cover the entire Province of Quebec. Very few appeals in French are heard from other areas.

CHAPTER VII

BILINGUALISM IN QUEBEC QUASI-JUDICIAL BOARDS AND COMMISSIONS

7.01 Introduction.-

In order to provide a foil against which to judge the conduct of quasi-judicial proceedings before federal boards and commissions and because we assumed that such comparative study would be instructive we decided to examine the operations of boards and commissions in the Province of Quebec which carry out quasi-judicial functions. These administrative entities were the same as those whose subordinate legislation we have surveyed in Part III of this research project. They were:

	Name of Board or Commissions	Abbreviation used
1.	Montreal Expropriation Bureau	Mtl. Expr. B.
2.	Workmen's Compensation Board	Work. Comp. Bd.
3.	Quebec Social Allowance Commission	Soc. All. C.
4.	Minimum Wage Commission	Min. Wage
5.	Quebec Hydro Electric Commission	Hydro
6.	Quebec Municipal Commission	Munic. Comm.
7.	Electricity and Gas Board	Elec. & Gas
8.	Water Board	Water Bd.
9.	Quebec Agricultural Marketing Board	Agric. Mark. Bd.
10.	Transportation Board	Transp. Bd.
11.	Highway Victims Indemnity Fund	Hi. Victims
12.	Public Service Board	Public S. Bd.

This research was conducted basically by means of a detailed questionnaire, similar to that answered by federal boards and commissions. The relevant questions of this questionnaire are to be found in Annex VII-A.

Although the Quebec Hydro Electric Commission replied at length to our questionnaire. we have omitted it from computations in this chapter because it does not perform any adjudication and consequently does not qualify as a quasi-judicial entity.

Regrettably. the Liquor Board. the Rental Board. the Labour Relations Board and the Securities Commission, all of them, highly active quasi-judicial boards did not reply to the questionnaire. This is very unfortunate since particularly the Rental Board and the Labour Relations Board operate in a manner very analogous to that of courts of law and their replies would have been very useful and rendered our statistics more accurate.

7.02 Constitutional position.-

In 6.02 we have examined the constitutional position of federal quasi-judicial boards and commissions. We noted that there are no serious jurisdictional problems at the federal level. The situation is not as clear in the case of provincial boards and commissions which exercise quasi-judicial powers. While s. 92 (14) of the B.N.A. Act entrusts to the provinces exclusive jurisdiction over the administration of justice in the province "including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts", s. 96 of the Act provides that the federal cabinet shall appoint "the Judges of the Superior, District, and County Courts in each Province". Section 98 furthermore provides that "Judges of the Courts of Quebec shall be selected from the Bar of that Province". From a constitutional point of view the attribution of quasi-judicial functions to provincial boards and commissions can create two problems. The first problem results from s. 96 of the Act. Indeed, if the board or commission has received powers which are equivalent to those of a "Superior, District, and County Courts", the question arises whether its members need not be appointed by the federal cabinet. The creation of the tribunal itself is obviously within provincial jurisdiction under s. 92 (14). The courts, from the Privy Council down, have been called upon to resolve this problem and have done so in the following manner[1].

---

1. cf. Laskin, op. cit., pp. 777-801.

The leading case is that of Labour Relations Board of Saskatchewan v. John East Iron Works Ltd.[1] . In this judgment, rendered by Lord Simonds of the Privy Council, the court had to deal with the issue of whether the Saskatchewan Labour Relations Board constituted a court within the meaning of s. 96 of the B.N.A. Act. Lord Simonds wrote:

> "The borderland in which judicial and administrative functions overlap is a wide one and the boundary is the more difficult to define in the case of a body such as the appellant Board, the greater part of whose functions are beyond doubt in the administrative sphere. Nor can a more difficult question be posed (but their Lordships can find no easier test) than to ask whether one Court is 'analogous' to another.
>
> The question for determination has been stated as a double one. And so logically it is. For it should first be asked whether the appellant Board when it makes an order under s. 5 (e) of the Act is exercising judicial power. If it is not, then it is not a Court at all and cannot be a 'Superior, District or County Court.' or a Court analogous thereto.
>
> . . . there are many positive features which are essential to the existence of judicial power, yet by themselves are not conclusive of it, or that any combination of such features will fail to establish judicial power if, as is a common characteristic of so-called administrative tribunals, the ultimate decision may be determined not merely by the application of legal principles to ascertained facts but by considerations of policy also.
>
> . . . It is a truism that the conception of the judicial function is inseparably bound up with the idea of a suit between parties, whether between Crown and subject or between subject and subject, and that it is the duty of the Court to decide the issue between those parties, with whom alone it rests to initiate or defend or compromise the proceedings. Here at once a striking departure from the traditional conception of a Court may be seen in the functions of the

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1. [1949] A.C. 134, [1948] 4 D.L.R. 673, [1948] 2 W.W.R. 1055, the decision of the Saskatchewan Court of Appeal being reported at [1948] 1 D.L.R. 652 and [1948] 1 W.W.R. 81.

appellant Board. For, as the Act contemplates and the Rules made under it prescribe, any trade union, any employer, any employers' association or any other person directly concerned may apply to the Board for an order to be made (a) requiring any person to refrain from a violation of the Act or from engaging in an unfair labour practice, (b) requiring an employer to reinstate an employee discharged contrary to the provisions of the Act and to pay such employee the monetary loss suffered by reason of such discharge, (c) requiring an employer to disestablish a company-dominated organization or (d) requiring two or more of the said things to be done. Other Rules provide for the discharge by the Board of other functions. It is sufficient to refer only to (b) supra, which clearly illustrates that, while the order relates solely to the relief to be given to an individual, yet the controversy may be raised by others without his assent, and, it may be, against his will, for the solution of some far-reaching industrial conflict. It may be possible to describe an issue thus raised as a lis and to regard its determination as the exercise of judicial power. But it appears to their Lordships that such an issue is indeed remote from those which at the time of Confederation occupied the Superior or District or County Courts of Upper Canada.

. . . It is in the light of this new conception of industrial relations that the question to be determined by the Board must be viewed, and, even if the issue so raised can be regarded as a justiciable one, it finds no analogy in those issues which were familiar to the Courts in 1867.

This matter may be tested in another way. If the appellant Board is a Court analogous to the Superior and other Courts mentioned in s. 96 of the B.N.A. Act, its members must not only be appointed by the Governor-General but must be chosen from the Bar of Saskatchewan. It is legitimate therefore to ask whether, if trade unions had in 1867 been recognized by the law, if collective bargaining had then been the accepted postulate of industrial peace, if, in a word, the economic and social outlook had been the same in 1867 as it became in 1944, it would not have been expedient to establish just such a specialized tribunal as is provided by s. 4 of the Act. It is as good a test as another of 'analogy' to ask whether the subject-matter of the assumed justiciable issue makes it desirable that the Judges should have the same qualifications as those which distinguish Lordships that to this question only one answer can be given. For wide experience has shown that, though an independent President of the tribunal may in certain cases be advisable, it is essential that its other members should bring an experience and knowledge acquired extra-judicially to the solution of their problems. The members of the Board are to be equally representative of organized employees and employers and in a certain event of the general public. That does not mean

> that bias or interest will lead them to act otherwise than judicially, so far as that word connotes a standard of conduct, but it assuredly means that the subject-matter is such as profoundly to distinguish such a tribunal from the Courts mentioned in s. 96."

In 1958 the Canadian Supreme Court considered the matter in the case of A. E. Dupont v. Inglis[1]. The judgment of the court was delivered by Mr. Justice Rand. We quote the following relevant passage from this judgment:

> "... The Province, under its authority over the administration of justice, including the establishment of Courts, may and is in duty bound to maintain judicial tribunals and define their jurisdiction. The restriction of s. 96, with ss. 99 and 100, provisions vital to the judicature of Canada, is confined to Courts endowed with jurisdiction conforming broadly to the type of that exercised in 1867 by the Courts mentioned in the section or tribunals analogous to them. A distinction is here necessary between the character of a tribunal and the type of judicial power, if any, exercised by it. If in essence an administrative organ is created ... there may be a question whether Provincial legislation has purported to confer upon it judicial power belonging exclusively to Courts within s. 96. Judicial power not of that type, such as that exercised by inferior Courts, can be conferred on a Provincial tribunal whatever its primary character; and where the administrative is intermixed with ultra vires judicial power, the further question arises of severability between what is valid and what invalid."[2]

On the whole the power of provincial governments to create quasi-judicial boards and commissions has been upheld subject to compliance with the above-mentioned restrictions outlined

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1. [1958] S.C.R. 535, 14 D.L.R. (2d) 417, an appeal from Ontario Court of Appeal [1957] O.R. 377, 8 D.L.R. (2d) 193, reversing a judgment of Ferguson, J., [1957] O.R. 193, 8 D.L.R. (2d) 26.
2. Quoted in Laskin, op. cit., pp. 791-2.

by the Privy Council and the Supreme Court.[1]

The second constitutional problem relates to s. 133 of the B.N.A. Act. If quasi-judicial boards and commissions in Quebec are "courts" then this section applies to them and they are bilingual. Both languages can be used before them. Otherwise nothing stops the province from decreeing that only French must be used in proceedings before such boards and commissions. As we stated in 6.02 we are of the opinion that administrative boards and commissions were not contemplated by the Fathers of Confederation and that s. 133 does not apply to them. Regrettable as such decision might be from a point of view of policy, boards and commissions in Quebec are not bound to adhere to s. 133.

---

1. cf. Laskin, op. cit., pp. 799-801.

7.03 Linguistic qualifications of members of quasi-judicial boards.-

(a) Mother tongue.- In the following table VII-1 will be found a breakdown of the mother tongue of the total of 153 members of the 11 boards and commissions surveyed. The table discloses that 144 (or 94.1%) are French-speaking and only 9 English.

TABLE VII-1

Mother tongue of members.-

Boards or Commissions	French	English	Total
Mtl. Expr. B.	4	0	4
Work. Comp. Bd.	13	0	13
Soc. All. C.	5	1	6
Min. Wage	5	0	5
Munic. Comm.	5	1	6
Elec. & Gas	65	2	67
Water Bd.	14	0	14
Agric. Mark. Bd.	7	0	7
Transp. Bd.	9	0	9
Hi. Victims	6	3	9
Public S. Bd.	11	2	13
TOTAL:	144	9	153

(b) Knowledge of English by French-speaking members.-

As will appear from the following table VII-2, almost the totality of the members of Quebec boards and commissions are said to write and speak English either "very well" or "quite well". They divide equally between these two categories. Less than 1/5 of 1% are listed as speaking or writing English with difficulty.

TABLE VII-2

Knowledge of English of French members.-

Abbreviations used: v.w.= very well
q.w.= quite well
w.d.= with difficulty

Boards or Commissions	TOTAL	Spoken English			Written English		
		v.w.	q.w.	w.d.	v.w.	q.w.	w.d.
Mtl. Expr. B.	4	4			4		
Work. Comp. Bd.	13	13			13		
Soc. All. C.	6	3	3		3	3	
Min. Wage	5	4	1		4	1	
Munic. Comm.	6	1	5		1	5	
Elec. & Gas	67	15	50		25	40	
Water Bd.	14	14			14		
Agric. Mark. Bd.	7	2	4	1	2	4	1
Transp. Bd.	9	3	6		3	6	
Hi. Victims	9	6	1	2	6	2	1
Public S. Bd.	13	6	7		6	7	
TOTAL:	153	71	77	3	81	68	2

This almost complete bilingualism is in marked contrast with proportions of no more than about 10% of bilingual members

on federal boards or commissions.[1]

(c) Knowledge of French by English-speaking members.-

Although we have no statistics on the knowledge of French of the very few English-speaking members of these boards and commissions, we can assume that it ranges from very good to quite good if the personal observations of most practitioners can be trusted.

(d) Language of board employees.-

We asked our respondents to state how many of their employees spoke either one official language or both. The Municipal Commission did not provide specific figures, but declared that all its employees spoke French and that 90% of them also spoke English. Subject to this remark the results are tabulated in the following table:

TABLE VII-3

Language spoken.-

Boards or Commissions	French	English	Both	TOTALS
Mtl. Expr. B.	6	6	6	6
Work. Comp. Bd.	1112	333	333	
Soc. All. C.	240	0	423	663
Min. Wage	196	0	133	296
Munic. Comm.	100%		90%	

(cont'd.)

1. cf. 6.07(b).

Table VII-3 (cont'd.)

Boards or Commissions	French	English	Both	TOTALS
Elec. & Gas		2	65	67
Water Bd.	52	48	48	
Agric. Mark. Bd.	55		40	
Transp. Bd.	20	0	12	32
Hi. Victims			31	
Public. S. Bd.	14	10	10	

While this table discloses that the majority of employees speak both languages, we have some reservations about the accuracy of the replies. For instance, the Workmen's Compentation Board stated that 333 of its employees spoke English and that the same number spoke both languages. We do not know whether the answer means that 333 employees are bilingual and that all of these are English-speaking or that out of a total of 1112 employees 333 are bilingual. The same might be said about the Water Board's reply or that of the Public Service Board. We erred in not phrasing the questions narrowly enough to avoid any possible misgivings.

7.04 Proceedings before Quebec boards.-

(a) Language of written and verbal proceedings.- An average of 86.5% of all written proceedings before the 10 boards replying are in French and the remaining 13.5% in English. The percentages are almost the same for oral presentations: 83.8% in French and 16.1% in English. A breakdown is found in the following table:

TABLE VII-4

Language of proceedings.-

Boards or commissions	Written proceedings		Oral presentations	
	French	English	French	English
Mtl. Expr. Bd.	80%	20%	80%	20%
Work. Comp. Bd.	95%	5%	95%	5%
Soc. All. C.	100%	none	none	none
Min. Wage	90%	10%	85%	15%
Munic. Comm.	90%	10%	90%	10%
Elec. & Gas	90%	10%	75%	25%
Water Bd.	90%	10%	90%	10%
Agric. Mark. Bd.	75%	25%	75%	25%
Transp. Bd.	75%	25%	75%	25%
Hi. Victims	not applicable----------			
Public S. Bd.[1]	80%	20%	90%	10%
AVERAGE:	86.5%	13.5%	83.8%	16.1%

1. Rule of Practice No. 4 adopted on February 28, 1956 by the Public Service Board pursuant to the Public Service Act, 1943 13 Geo. VI, c. 47, states: "Every application made to the Board shall be in writing, in quadruplicate, preferably in the form of a petition, which shall be printed, types or legibly written in ink, in French or English, and on one side of the paper only."

(b) Languages used by members of the boards.- Out of 10 boards replying, 5 stated that French was the language always used by their members in the course of hearings. The other five said that French was used "often". As for English, 2 boards said that their members use it "often", and 8 that they did so "rarely".

(c) Languages used by witnesses.- Three boards said that witnesses always use French and 7 that they did so "often". As for English, 3 boards found that witnesses resorted to it "often" and 7 that they did so "rarely".

(d) Interpreters.- Ten out of 11 boards replying stated that they did not retain the services of interpreters and another one alluded to the occasional use of volunteer interpreters. Only 2 out of 11 boards said that sometimes lawyers retain the services of interpreters. The Bill of Rights requirement of interpreters before boards and commissions does not apply to provincial tribunals. [1]

(e) Official Stenographers.- The replies to our queries about the availability of stenographers able to take down depositions in French, English or both were not too clear. Out of 9 boards, 3 stated that they had no stenographers. The Public Service Board, declared that the parties requiring stenography would bring with them official stenographers from the Superior Court. The Municipal Commission said that it did not have stenographers and would hire official court stenographers as the need arose. Only 5 boards stated that they had their own stenographers to record evidence, all but one of them having a certain number of stenographers capable of taking down evidence in

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1. cf. 6.08(h).

English or in both languages.

7.05 Language of decisions and reasons therefor.-

As will appear from Table VII-5, 86.5% of all decisions rendered by the 10 boards replying specifically are in French:

TABLE VII-5

Language of decisions.-

Boards or commissions	French only	English only
Mtl. Expr. B.	100%	nil
Work. Comp. Bd.	95%	5%
Soc. All. C.	100%	nil
Min. Wage	100%	nil
Munic. Comm.	90%	10%
Elec. & Gas	100%	nil
Water Bd.	90%	10%
Agric. Mark. Bd.[1]	20%	
Transp. Bd.	75%	25%
Hi. Victims	n/a	n/a
Public S. Bd.	95%	5%
AVERAGE:	86.5%	11%

This proportion closely reflects that of written and oral proceedings.[2]

1. The Agricultural Marketing Board stated that 80% of its decisions were rendered in both languages and 20% in French only.
2. cf. 7.04 (a).

When asked to state the reasons for their linguistic practices 5 boards out of the 10 replying referred to the mother tongue of their members, but 4 claimed that this was not the explanation. Eight boards declared that their usual criterion was the language of those to whom the decision was aimed. The Expropriation Board, however, stated that it paid no attention to this factor. The Minimum Wage Commission said:

> "Au sein de l'administration, tout se fait en français."

It added:

> "Toute decision est rendue en français et sera traduite, si celui à qui elle est adressée est de langue anglaise."

The Electricity and Gas Board commented:

> "La version française est bien accueillie même des procureurs qui sont de langue anglaise."
>
> "Beaucoup de procédures sont entamées devant la Régie dans les deux versions simultanées française et anglaise. Ce qui donne entière liberté à la Régie de tout traiter exclusivement en français, si tel est son désir."

The Water Board replied:

> "Dans la pluralité des cas, les auditions se font en français, puisque la plupart des personnages entendus sont de langue française.
>
> Si la décision concerne un groupe à prédominance anglaise, la décision sera rendue dans cette langue."

The Quebec Agricultural Marketing Board stated:

> "Simple politesse - Reconnaît statut des deux langues officielles - Notre organisme se donne beaucoup de travail à cette fin."

The Public Service Board commented:

> "Certains régisseurs prétendent qu'il est plus facile pour eux de rendre une décision dans leur langue maternelle.
>
> Certains régisseurs prétendent qu'il est plus normal de rendre la décision dans la langue de celui à qui elle s'adresse."

7.06 Publication of decisions.-

As a rule none of the decisions of the boards replying are published in any formal or organized manner, although the more important decisions of the Labour Relations Board (which did not reply to our questionnaire) are reprinted in La Revue du Droit du Travail and in other unofficial legal periodicals.

7.07 General comments.-

Some boards and commissions made general comments worth noting. The Municipal Commission stated that the difficulties of interpretation it had encountered were the same as those of ordinary courts. The Gas and Electricity Board wrote about the use of French:

> "Bien que le français y soit prédominant, la langue parlée ne semble provoquer aucune récrimination. L'interlocuteur de langue anglaise se sent à l'aise d'utiliser sa langue ou plaider en anglais s'il a l'impression d'être mieux compris, et il use librement de son droit. Le français n'est pas imposé."

The English language, it said, is

> "Toujours bien accueillie, Rares sont les cas où il faut y recourir exclusivement. Mais les exigences sont respectées."

The Quebec Agricultural Marketing Board commented:

> "Le français étant plus précis il est parfois difficile de trouver une traduction exacte."

About English, it stated:

> "Pose quelques problèmes de traduction lorsque notre organisme rend une sentence arbitrale. Ce n'est pas un problème insurmontable."

7.08 Conclusion.-

While a large majority of cases heard by quasi-judicial boards and commissions in Quebec are conducted in French, this obviously results from the choice of the parties rather than from any built-in deficiencies of the system. Indeed, practically all members of these boards and commissions are fluently bilingual and adequate bilingual stenography seems to exist. The percentage of cases proceeding in English (16.1%) in Quebec is more than double the proportion (7.3%) of cases conducted in French before federal boards. The significance of this comparison is that bilingualism is not very exceptional before Quebec quasi-judicial tribunals.

ROYAL COMMISSION OF INQUIRY ON BILINGUALISM AND BICULTURALISM

QUESTIONNAIRE CONCERNING THE ADMINISTRATION AND THE DRAFTING IN PUBLICATION OF THE TEXTS OF SUBORDINATE LEGISLATION

1. Of the commissioners, officers and members of the administrative organization, please indicate . . .

a) the number whose mother tongue is French ( )

b) the number whose mother tongue is English ( )

c) the number whose mother tongue is neither English nor French ( )

2. Of the commissioners, officers, and members of the administrative organization, please indicate . . .

A- the number of those who write French . . .

1- very well _____

2- quite well _____

3- with difficulty _____

4- not at all _____

Total ( )

B- the number of those who speak French fluently . . .

1- very well _____

2- quite well _____

3- with difficulty _____

4- not at all _____

Total ( )

C- the number of those who write English . . .

1- very well _____

2- quite well _____

3- with difficulty _____

4- not at all _____

Total ( )

D- the number of those who speak English fluently . . .

1- very well _____

2- quite well _____

3- with difficulty _____

4- not at all _____

Total ( )

E- the number of those who speak and understand a language other than French and English . . .

1- number _____

2- please indicate the languages _____

3. Of the number of your employees of your organization please indicate . . .

A- the number of those who speak French _____

B- the number of those who speak English _____

C- the number of those who speak English and French _____

TOTAL ( )

4. Concerning the languages used in pleadings before your organization please indicate . . .

A- the percentage of the written proceedings in French _____%

B- the percentage of the written proceedings in English _____%

C- the percentage of all pleadings in French _____%

D- the percentage of all pleadings in English _____%

E- the percentage of pleadings in a language other than French or English _____%

5. At the inquiry and hearing . . .

A- is French used by the members of your organization . . .

often _____

seldom _____

B- is English used by the members of your organization . . .

always _____

often _____

seldom _____

C- is French used by witnesses . . .

always _____

often _____

seldom _____

D- is English used by witnesses . . .

always _____

often _____

seldom _____

E- is a language other than English or French used by witnesses....

no _____

yes _____ if yes please state which languages _____

6. This question concerns interpreters . . .

A- does your organization hire interpreters?

no _____

yes _____

B- do the council or representatives of the parties for your organization hire interpreters?

no _____

yes _____

C- please indicate what percentage of the sessions of your organization translation is necessary.

1- translation from French to English _____%

2- translation from English to French _____%

3- translation from another language into English or French _____%

4- translation from English or French into another language _____%

7. Concerning stenographers, please indicate . . .

A- the number of stenographers who are able to take depositions in French _____

B- the number of stenographers who are able to take depositions in English _____

C- the number of stenographers who are able to take depositions in both languages _____

8. Concerning the decisions of your organization . . .

A- what proportion of these decisions are delivered during a year in French _____%

B- what is the criterion used for choosing either English or French in rendering the decisions of your organization?

1- the language spoken by the officer rendering a decision?

Yes _____

If Yes please state why _____

No _____

2- the language of those to whom the decision is rendered?

Yes _____

If Yes please comment _____

No _____

3- please state other criteria _____

C- are your decisions published?

Yes _____

No _____

If Yes where _____

D- What percentage of your decisions rendered in French are translated into English?

_____%

E- What percentage of your decisions rendered in English are translated into French?

_____%

F- Who translates the decisions of your organization . . .

1- translators attached to the organization

Yes _____

No _____

2- translators non-attached to the organization

Yes _____

No _____

3- members or employees of your organization

Yes _____

No _____

ANNEX 3

If your administration has a quasi-judicial function please indicate the conventions, and problems of interpretation concerning . . .

Written and Spoken French:

Written and Spoken English:

PART V

THE LAW OF BILINGUAL ADMINISTRATION

CHAPTER VIII

BILINGUAL MUNICIPAL INSTITUTIONS

A. INTRODUCTION

8.01 Purpose of this chapter and methods of research.-

The purpose of the present chapter is to examine from a juridical point of view the operations of bilingual municipalities. At the present time municipal institutions are officially bilingual only in Quebec. A certain degree of de facto bilingualism also prevails in some areas of New Brunswick and, perhaps elsewhere in Canada. In order to determine how bilingual municipalities operate, we have concentrated our study on Quebec, although we made a more limited survey of the New Brunswick experience.

Our research was conducted mainly through a questionnaire, a copy of which will be found attached hereto as annex VIII-A. This questionnaire was sent to a total of 34 Quebec and 8 New Brunswick municipalities. We received 21 usable replies: 17 from Quebec and 5 from New Brunswick. In addition, while we did not send a questionnaire to the City of Montreal, we examined carefully its 1180-article charter[1] and its more than 3,000-odd by-laws up to November 31, 1965. Montreal is a completely bilingual metropolis which is not entirely typical of bilingual municipalities in Quebec.[2] It has a numerous and powerful English-speaking minority and has traditionally conducted most of its public affairs in both languages. The distribution of the English

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1. Charter of the city of Montreal, 1960, 1959-60 8-9 Eliz. II, c. 102, as amended.
2. According to the 1961 census 21.91% of the population of the Montreal metropolitan zone spoke only English; 39.17% only French; 36.81% spoke both languages and 2.10% spoke neither language. In Montreal proper, out of a total of 1,191,062 citizens, 212,461 spoke only English; 479,411 only French; and 462,804 claimed to be bilingual. If mother tongue is taken as a criterion, English was that of only 203,562 Montrealers.

minority in the 17 Quebec municipalities replying to our questionnaire was smaller and did not appear to have the same social importance as in the metropolis. This will be evident from the following table:

TABLE VIII-1

Percentage of English-speaking inhabitants in Quebec municipalities replying:

Percentage	Number of municipalities
0-10%	11
10-20%	4
20% or over	2 [1]

The sampling of municipalities replying is fairly representative of the total of 34 Quebec municipalities queried, as will appear from the following table which indicates the percentage of the English minority in the municipalities which failed to reply to the questionnaire:

TABLE VIII-2

English minority in municipalities not replying:

Percentage	Number of municipalities
0 - 10%	10
10 - 20%	3
20 - 30%	3
30 - 40%	1

Insofar as New Brunswick is concerned, the samplings could not be as accurate and could not provide statistical data of any importance. In the 5 municipalities of that province which replied, the French-speaking minority varied as follows:

1. One of them is the City of St. Lambert which, according to the 1961 census, had, out of a total of 14,531 citizens, 5,929 who spoke only English; 2,210 who spoke only French; and 6,324 who were bilingual. This gave it the highest ratio of English inhabitants among our Quebec respondents. (cont'd. next page)

TABLE VIII-3

French population in New Brunswick municipalities replying:

Municipality	Percentage
Edmunston [1]	85%
Fredericton	7.7%
Moncton	36.2%
Oromocto	2%
St. John	14.4%

The variations were just as considerable in the 3 municipalities from which no reply was received:

TABLE VIII-4

French population in New Brunswick municipalities not replying:

Municipality	Percentage
Lancaster	8.5%
Bathurst	63.3%
Simonds	5.4%

Obviously, a much larger number of New Brunswick cities and towns should have been included in our survey to provide really meaningful comparisons.

---

1. According to the 1961 census, in Edmunston, out of 12,791 citizens, 796 spoke English only; 5,947 French only; and 6,023 claimed to be bilingual. If the mother tongue is to be taken as a criterion, French was that of 11,354 inhabitants and English that of only 1,344.

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footnote 1. cont'd. from previous page:

If mother tongue is the criterion, English was the mother tongue of 7,970 citizens of the City of St. Lambert, the absolute majority.

8.02 Historical background.-

Official bilingualism in municipal institutions has been limited historically to Quebec or to Lower Canada. While not purporting to have made an exhausted historical survey, we would draw attention to the following provision in the statutes of Lower Canada just prior to Confederation to establish the historical roots of the present rules of law. In 1845 the Legislative Assembly of Lower Canada adopted a statute dealing with police powers in Quebec, Montreal and Trois-Rivières.[1] This Act permitted the justices of the peace in these three municipalities to frame rules and orders with fines and penalties for the breach thereof "judged requisite and proper for the regulation of the police" in these cities. Section II provided that no such rule or order could have effect before a copy thereof "in French and English" had been fixed and posted on the door of the parish church in these cities and in such public places "and published in such newspapers printed in the said cities, respectively, as the said justices of the peace shall order".

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1. An Act more effectually to provide for the regulation of the Police in the Cities of Quebec and Montreal, and the Town of Three-Rivers, and for other purposes therein mentioned, 1845 R.A.O.L.C. c. 21.

A number of important provisions are found in An Act respecting Municipalities and Roads in Lower Canada[1]. Section 6 stated that all public notices required by the Act would be given in the following manner:

> "...2. The person required to give such notice shall cause the same to be drawn up, and shall give it, in the English and French languages, unless the use of either of the said languages be dispensed with in the manner hereinafter provided, and then in that one of the said languages which should be used;"

Special notices were to be given in the language of the person to whom they were addressed:

> " ... 2. The person required to give such notice shall cause it to be drawn up in the language of the person to whom it is addressed, if such language be the English or the French, or if it be any other language, then, in either the English or the French language, and after having signed it, shall serve it on the person to whom it is addressed, by causing a true copy thereof to be delivered to him personally, or left with some grown person at his domicile;"[2]

We will see in the next section that this distinction between public and special notices had been preserved in the current

---

1. 1861 C.S.L.C., c. 24 and 23 Vict., c. 61.
2. s. 7.

Cities' and Towns' Act[1] in Quebec, although the reference to the language of the receiver of the special notice has been eliminated. Provision was also made for bilingual publication of by-laws:[2]

> "10. Every municipal council shall publish each by-law made by it, by causing to be posted in the manner hereinbefore prescribed within fifteen days from the passing of such by-law a public notice certified by the Secretary-Treasurer, mentioning the date and object of such By-law, and the place where communication thereof may be had:
>
> 2. In parishes, the council shall also publish all by-laws, by causing them to be read in the English and French languages, unless the use of either of the said languages be dispensed with, and then in that one of the said languages which should be used, at the door of the church of the parish to which they relate, immediately after divine service in the forenoon, if such service be celebrated, on each of the two Sundays next after the passing of such by-laws;
>
> 3. And every such council may also cause all, or any, of such by-laws to be published in any newspaper printed in the district, or in any adjoining district."

However, the government could dispense any municipality by order-in-council from publishing its by-laws and public notices in both languages provided this could be done "without detriment to any of the inhabitants thereof".[3] We will see in the next section that this dispensation is still found in the Quebec Municipal Code governing less important municipalities. It does not appear in the Cities' and Towns' Act.

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1. 1964 R.S.Q., c. 193.
2. s. 10.
3. s. 11.

However, exceptions were soon made to the requirements of bilingualism. For instance, the 1863 statute incorporating the Town of Joliette[1] required that by-laws be published only in French while the statute incorporating the Town of Beauharnois in the same year[2] stated that public notice of municipal elections need be in French only. In Montreal, on the other hand, [3] as in Quebec City[4] the law continued to require publication of notices in both languages. The statute incorporating Berthier in 1865 provided for bilingual notices of sale of immoveables[5]. Provision for bilingual notices was again made in the 1866 Act to provide for ascertaining what persons have rights in the Commons of Berthier and Ile du Pads.[6] In the same year an amendment to the statutes governing the city of Montreal stipulated the the expropriation Commissioners were to give bilingual notices of the day on which the value of land to be expropriated would be determined.[7]

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1. An Act to incorporate the Town of Joliette, Canada, 27 Vict. (1863), c. 23, s. 43.
2. An Act to incorporate the Village of Beauharnois as a Town, Canada 27 Vict. (1863), c. 24, s. 7.
3. An Act to amend the Acts relating to the Corporation of the City of Montreal, and for other purposes, Canada, 27-28 Vict. (1864), c. 60, s. 11 (notices of expropriation), s. 39 (notices of tax assessments) and s. 45 (notices of water rates).
4. An Act to amend and consolidate the provisions contained in the Acts and Ordinances relating to the incorporation of and the supply of water to the City of Quebec, Canada, 29 Vict. (1865), c. 57, s. 11 (notice of list of electors), s. 17 (notice at meetings of Board of Revisors), s. 12 (3) (notice of nominations of candidates to municipal offices), s. 17 (8) (publication of abstracts of accounts of city treasurer), s. 55 (notice of found animals), s. 34 (notice of deposit of general plan of the city), s. 35 (4) (notices of assessments), s. 34 (14) notices of decision of expropriation commissioners), s. 34 (19) (publication of resolution that city ready to furnish water).
5. 1865 29 Vict., c. 61, s. 36 (4).
6. 29-30 Vict. (1866), c. 63, s. 5.
7. An Act to amend the provisions of several Acts relating to the City of Montreal, and for other purposes, Canada, 29-30 Vict. (1866), c. 56, s. 11.

8.03 Legal background.-

Under s. 92 (8) of the B.N.A. Act, exclusive jurisdiction over "Municipal Institutions in the Province" is attributed to the provincial Legislatures. New Brunswick, in which everyone seems to assume that English is the official language of the Province, does not appear to have legislated on the use of languages by municipalities. Quebec, on the other hand, and as we have seen in the previous section, has done so. Section 362 of the Cities' and Towns' Act[1] provides that all public municipal notices "must be drawn up in French and in English". This does not apply to special notices which must only be served on the interested parties.[2] Section 382 of the Act states:

> "Except where otherwise provided, documents, orders or proceedings of a council, the publication of which is required by law or by the council, shall be published in the manner and at the place prescribed for public notices."

Since sections 387, 391 and 392 provide for publication of the by-laws of cities and towns in Quebec, by reference to s. 382, which in turn refers to s. 362, all municipal by-laws must be in both languages. Publication of a by-law in one language only is illegal. As a rule, under s. 2 of the Act, its provisions apply to all the more important cities and towns in the Province which have been incorporated by special act of the Legislature or by letters patent. It should be noted that s. 358 of the Cities' and Towns' Act permits the city council to make and enforce rules and regulations for its internal government.

1. 1964 R.S.Q., c. 193.
2. s. 362.

No reference is made to the language of deliberations. Consequently, subject to the foregoing provisions, a city council could legally decide that all its deliberations should be conducted in a single language, provided that by-laws and decisions were rendered in both languages. Less important towns and territories in the Province are governed by the Municipal Code. Article 127 of the Code guarantees the right to use either French or English in any sittings of the municipal council. Article 128 states that all municipal records must be kept in either French or English but does not require that they be kept in both languages. Insofar as public notices, by-laws, resolutions and orders are concerned, they must be published in both languages[1] unless the Corporation has been authorized to use only one language by order-in-council[2]. Without such exemptions by order-in-council, the publication of a by-law in only one language will render it illegal.[3] None of the municipalities replying to our questionnaire had been so authorized by the Minister of Municipal Affairs.

As we will see in 8.04 (a) and (b), many Quebec municipalities do not meet the legal requirement that their by-laws be bilingual. That this is not a new phenomenon is evident from the pre-war Act to validate the Publication of certain Municipal Notices[4] which was designed to enable municipalities to correct this illegality at least insofar as the period prior to April 11, 1935 was concerned.

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1. Art. 129.
2. Arts. 130, 131 and 131a.
3. Tremblay v. The Corporation of the South Part of the Township of Onslow (1933) 39 R. de J. 193 (Magistrate's Court).
4. 1941 R.S.Q., c. 229.

This one-sectioned statute read as follows:

> "The publication of any special or public notice, by-law, resolution or ordinance of a municipal council, made before the 11th of April, 1935, either in the French language or in the English language, when the law required that such publication be made in both languages, may be declared valid and legal by following the formalities hereinafter prescribed.
>
> The municipal council may, by resolution, make a petition therefor to the Lieutenant-Governor in Council and the latter, upon a report of the Quebec Municipal Commission to the effect that acquired rights are not affected, may grant the petition of the said municipal council.
>
> The order of the Lieutenant-Governor in Council granting such petition shall have the effect of rendering the publication concerned valid and legal for all legal purposes."

This statute was never amended nor repealed but, having obviously fallen into desuetude, it does not appear in the 1964 Revised Statutes of Quebec.

Limitations of time prevented us from examining individually the hundreds of letters patent and private bills dealing with various municipalities in Quebec and in which relevant provisions or exceptions to the general law might be found. It would not be surprising to find legislative exemptions from bilingual publication of by-laws in the case of smaller municipalities consisting entirely of French-speaking

citizens. We can only hope that subsequent research will complete the investigation we initiated. Question 2 of our questionnaire was specifically aimed at uncovering whether such special provisions might be found in the incorporating charters or statutes.

None of the Quebec municipalities had provisions which rendered one or the other language obligatory. Three stated that both languages were obligatory, and 5 that both were permissible. None of the New Brunswick municipalities had relevant provisions, but the City of Moncton indicated that the use of either French or English was "optional".

B. MUNICIPAL BY-LAWS

8.04 Municipal by-laws.-

We saw that in Quebec, unless there is an exemption in the case of municipalities governed by the Municipal Code, or provisions to the contrary in the incorporating charter or letters patent, all municipal by-laws must be published in both languages. The results of our questionnaire are puzzling in view of the fact that none of the municipalities queried claimed an exemption from bilingual publication. The results are tabulated in the following sub-paragraphs.

(a) Language used to draft municipal by-laws.-

Sixteen out of 17 Quebec municipalities always drafted all their by-laws in French. The City of St. Lambert, on the South shore of the St. Lawrence, across from Montreal, 60% of whose citizens are English-speaking, was the only one to claim that it drafted its by-laws in both languages. When asked for the reasons for their practice, 8 municipalities stated that it was because of the overwhelming French-speaking majority in their community. Two municipalities said that they had no demand for English drafts. One explained that French only was used because it was the language of the attorneys drafting the by-laws. One blamed the fact that some members of the city council did not know English. Another one stated that all its personnel was French-speaking. Two said that all or almost all members of the council were French-speaking. Three commented that an English version would be prepared upon request and forwarded.[1] In New Brunswick, all the municipalities replying stated that their by-laws were drafted in English only. The reasons

1. One city stated: "Certains règlements d'application courante tel que les règlements de zonage, construction, taxes d'affaires, des chiens, ont été traduits en Anglais sur demande."

given varied from the fact that all relevant provincial statutes were in English, to custom, lack of demand, or the fact that English "is the only language everyone understands".

(b) Publication of municipal by-laws.- For the reasons already indicated, we noted with considerable surprise that only 8 Quebec municipalities indicated that their by-laws were published in both languages while 9 said that French was the only language used. Since none of these 9 municipalities were exempted from bilingual publication, their by-laws must be illegal. In Montreal by-laws 1 to 1706 were published separately in French and English versions. Since August 18, 1942 (by-law 1707), both versions are published simultaneously and on the same page (the French on the left and the English on the right hand side of the page). When older by-laws are either consolidated or reprinted, they are issued with both versions on the same page. The Charter of the City of Montreal does not contain any rule except for its requirement that annexation by-laws be published once a week for one month in two English and two French newspapers in the City.[1]

All New Brunswick municipalities replying to our questionnaire stated that they published their by-laws only in English.

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1. 1959-60 8-9 Eliz. II, c. 102, s. 17.

(c) Translation of municipal by-laws.- The replies to our question about the translation of by-laws were not very helpful. As we have seen, 9 out of 16 Quebec municipalities replying did not bother to publish their by-laws in two languages. We also saw that some of the municipalities which drafted their by-laws only in French would provide translations on request. In reply to our specific question, 3 Quebec municipalities stated that if any translation took place, it would be from French into English (10 municipalities saying that no such translation took place). Only one municipality had had occasion to translate its by-laws from English into French. None of the New Brunswick municipalities did any translation.

(d) Conflicts between two versions of a municipal by-law.- In chapter III we examined the problems resulting from legislating in two languages, and particularly the problems of interpretation it creates.[1] There is no fundamental distinction between statutory legislation, subordinate legislation, and municipal legislation by by-law. In all three cases the rules are promulgated to govern specified acts or omissions. The activities regulated may differ but, generally speaking, the legislative process is the same. Not as much care may be given to consistency and linguistic niceties at

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1. cf. ss. 3.41 et seq..

the municipal level as in the drafting of acts of Parliament, but the problems of drafting a municipal by-law in two languages are not much different from those facing the federal or provincial legislators.

Since much municipal legislation is very technical, one problem encountered is that of terminology. One language might not have the exact equivalent of a well-known term in the other language. As in the case of subordinate legislation[1] clarity is frequently achieved by giving between brackets the English, or French, equivalent of the term of which a translation is attempted. We have noted the following examples in the by-laws of the City of Montreal:

1- "cabrouets (Scotch carts)"[2]

2- "panneau à rabattement (tail-board)"[3]

3- "jeux de boules (pin ball machines)"[4]

4- "fuel burning equipment (appareil de combustion)"[5]

5- "dust-separating equipment (appareil de dépoussiérage)"[6]

6- "alarm (alarme)"[7]

7- "building (bâtiment)"[8]

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1. cf. s. 3.36.
2. By-law 1319, art. 16 (b).
3. By-law 1319, art. 107.
4. By-law 2223
5. By-law 2305, art. 2.
6. By-law 2305, art. 2.
7. By-law 2572, art. 1 (1).
8. By-law 2572, art. 1 (1).

The second most difficult problem is that of interpreting conflicts between the French and English versions of the same by-law.[1] Question 16 of our questionnaire asked whether municipal by-laws contained any rules giving priority to either text in case of divergencies between the French and English versions of a by-law. Six municipalities in Quebec stated that the French text would prevail, and 4 that it would not. None stated that the English version would prevail, except the City of Arvida which said that the English version had priority from 1926 to 1948 inclusive. Both the cities of St. Lambert and of Salaberry de Valleyfield stated that their rule of interpretation was to give priority to the text which is most consistent with the intention of the by-law. The City of Val D'Or said that its by-laws were drafted in French and that consequently the original French version would have priority. Since, as we have seen the majority of Quebec municipalities queried only had official versions in French of their by-laws, any English translation would be unofficial and could not really prevail against French texts approved by the city council. No replies were received from New Brunswick.

Our survey of by-laws of the City of Montreal disclosed that 10 by-laws contained a specific provision as to which text

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1. For a discussion of the problems of interpretation of bilingual legislations, cf. ss. 3.41 to 3.47.

would prevail. In 9 cases it was provided that in the event of conflict or contradiction between the English and French versions, the French texts would prevail.[1] Only one by-law provided that the French or English text would prevail according to circumstances.[2] An interesting problem of interpretation results from municipal legislation by reference. By-law 891 concerning milk contains[3] a reference to the norms of the International Association of Milk and Food Sanitarians, of the United States Public Health Service and of the Dairy Industry. Upon our inquiry, the International Association of Milk and Food Sanitarians advised us in writing on August 14, 1965 that it had no French version of its sanitary norms. Nevertheless article 164 of this by-law states that the French text shall prevail in the event of conflict. The prevalence of French is somewhat negated by the reference to the norms of an American association. The same situation is found in by-law 2395 concerning plumbing. Article 18-6 thereof refers to the making of fuel oil tanks with materials meeting the specifications of the National Fire Codes of the National Fire Protection Association of the United States. We can presume that this association also issues all its specifications in English only. Nevertheless article 0-6 of the by-law gives priority to French.

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1. By-laws 891 (art. 164), 1089 (art. 29), 1305 (art. 17), 1319 (art. 156), 1448 (art. 20), 2572 (art. 6-2), 2812 (art. 14), 2395 (art. 0-6), 2751 (arts.33). By-law 1448 (art. 20) states: "In case any clause of the English version of this by-law should not agree with the corresponding clause of the French version, the French text in which said by-law has been prepared, shall prevail." (italics ours).
2. By-law 2369, art. 3.
3. In art. 10 a.

C. MUNICIPAL COUNCILS

8.05 General language of council meetings.-

Sixteen Quebec municipalities out of 17 said that the language usually spoken during council meetings was French. The seventeenth, the City of St. Lambert, had bilingual meetings. The minutes of all sixteen were in French, only those of St. Lambert being in two languages.

Section 128 of the Charter of the City of Montreal provides:

> "The minutes of the meetings of the council shall be drawn up and fairly entered or typewritten in French and English, in a book kept for that purpose by the city clerk; after being read and confirmed at the following meeting, they shall be signed by the clerk and by the mayor or the councillor who presides at such meeting; they shall be open to the inspection of all ratepayers who wish to examine them."[1]

The Charter does not contain any provision concerning the language to be used in the Executive Council[2], but we are advised that the minutes of the Executive Council are kept in French only.

8.06 Use of interpreters.-

No municipality replying to our questionnaire in Quebec or in New Brunswick has a service of interpreters. With respect to council meetings, 15 Quebec municipalities said that they had no need for interpretation. The City of Val D'Or sometimes needed interpreters for translation from English to French. And one city

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1. 1959-60 8-9 Eliz. II, c. 102.
2. cf. ss. 78-110 of the Charter.

needed translation from French to English.

D. NOTICES, PUBLIC POSTERS AND SUMMONSES

8.07 Public and special notices.-

We saw[1] that save for specific exceptions Quebec law requires all public notices - as distinguished from special notices - to be drafted in both languages.

In reply to our query about the language of such notices, all 17 Quebec municipalities said that their public notices were in both languages. One stated that its special notices were only in French because they would be served only on French-speaking persons. There thus seems to be total compliance with the law in this area, unlike in the case of municipal by-laws.

Insofar as the City of Montreal is concerned, section 1169 of the Charter[2] provides a similar general rule:

> "Whenever the city is required to give any notice in the newspapers, it shall suffice, if such notice is published once in an English and once in a French daily newspaper published in Montreal. except where special provisions prescribe a different method. The city may also, if it wishes, publish any public or other notice in a newspaper published in a foreign language." [3]

The only other provisions in the Charter are found in s. 41 (2) which requires a bilingual public notice of amendments to the general plan of the City, and in s. 573 requiring bilingual notice of the appointment of the three engineers composing the Electrical Commission of the City of

1. In 8.03.
2. 1959-60 8-9 Eliz. II, c. 102.
3. It should be noted that s. 1169 refers only to the language of the newspaper and not to that of the notice. Technically the notice could be published in the same language in both newspapers.

Montreal. On the other hand, several Montreal by-laws which stipulate the publication of public notices specify that such notices must be in both languages.[1]

The replies from New Brunswick were interesting: two municipalities (Edmunston and Moncton) said that they published their public notices on occasion in both languages. The other 3 only use English.

8.08 Posters and similar notices.-

In reply to our query as to the language used for posters, notice boards and similar notices, the replies from Quebec were as follows: 5 municipalities answered that their practice was to use both languages "always"; 8 that they did so "generally", one that it did so "sometimes" and 1 that it never did so. One municipality said that it always used French only; two that they "generally" used French only and 2 stated that sometimes their posters were only in French.

In New Brunswick, 2 municipalities (Edmunston and Moncton) said that they resorted "usually" to both languages. The others always used English only.

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1. By-law 340 (s. 10) dealing with explosives and combustible material requiring bilingual notice by the City Clerk of a request for a permission to erect or use a building; by-law 407 (s. 2) providing for public notice in both languages of the appointment of the Electric Service Commission of the City of Montreal; by-law 581 (s. 3) concerning the wiring of buildings to connect with the municipal underground system stating that a bilingual public notice shall be given of the completion of underground conduits; by-law 612 (s. 1) concerning the erection of ice houses requiring bilingual notice thereof; by-law 962 (art. 3) concerning the erection or establishment of night refuges requiring public notice in two languages of an application to erect a night refuge; by-law 1009 (art. 3) concerning laundries also requiring (cont'd. next page)

8.09 Traffic and road signs.-

In reply to our query about the language of traffic and road signs, 15 Quebec municipalities said that they use both languages. Three said that they use French only[1]. None used only English signs. In New Brunswick, out of 4 answers, the City of Edmunston said that its traffic signs were bilingual, the other three saying that English only was used. The answer of the City of Moncton was not intelligible since it stated simultaneously that its signs were neither in both languages, nor in French only, nor in English only.

8.10 Safety signs and labels.-

Experience teaches that many municipal by-laws provide for the posting of safety signs such as "no smoking" signs. Question 11 of the questionnaire was drafted to determine what language would be used for such signs. In Quebec, 16 replies were received, of which 13 stated that such signs would be in both languages; 1 that they would be in either French or in English; and 2 that they would be in French only.

A number of Montreal by-laws provide specifically for

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footnote 1. continued from previous page:

public notice in both languages. All the foregoing by-laws required a notice to be published by advertisement in English and French newspapers rather than stating specifically that the notice must be in both languages. Technically, if it could do so under the general law, the City could publish such notices in one language in French and English newspapers and comply with its by-laws.

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1. The discrepancy in numbers producing a total of 17 answers for 16 municipalities is due to the fact that the City of La Tuque answered affirmatively to the question of whether its signs were bilingual and of whether they were in French only.

bilingual safety signs. For instance, by-law 340 relating to explosives and combustible material states that carts containing powder must bear signs in two languages reading "Powder to be wheeled out in case of fire" and "Poudre pour être transportée en dehors en cas d'incendie"[1]. The same by-law also requires the owner or driver of such vehicle to post in French and English copies of the rules relating to explosives and combustibles[2]. By-law 1275 concerning the use of fumigants forbids that fumigation begin before the fumigator has personally inspected all the rooms and warrant the responsible occupants thereof "verbally and over his signature, in French or in English, as the case may be"[3]. By-law 2572 concerning fire prevention provides for the following bilingual signs or notices:

"sortie"	or	"exit"[4]
"défense de fumer"	--	"no smoking"[5]
"arrêtez le moteur durant le remplissage"	--	"stop motor during filling"[6]

1. s. 18.
2. s. 20 (e).
3. art. 20.
4. arts. 5-7 and 8-3.
5. art. 10-10.
6. art. 10-10.

Similar bilingual signs dealing with smoking and stopping the engine are to be found in by-law 2600 dealing with filling stations.[1] By-law 1319 relating to traffic and public safety provides for "cédez - yield" signs.[2] Other by-laws, such as by-law 1089 concerning mattresses and other stuffed articles of bedding[3] and by-law 896[4] concerning the meat trade stipulate bilingual inscriptions on certain required labels.

In New Brunswick, only one municipality, namely Edmunston which has an 85% French-language majority, would have bilingual signs. All the others were English only.

8.11 Traffic tickets and summonses.-

Sixteen out of 17 Quebec municipalities issue traffic tickets and summonses which are bilingual.[5] The only exception is Thetford Mines, which uses French only. The City of Quebec specified that its summonses for violations of municipal by-laws, as distinguished from traffic tickets, were French only in 90% of the cases, the remaining 10% being in English. The City of Ste-Thérèse stated that while its traffic tickets were bilingual, this was not the case with its summonses, but did not go further.

Traffic tickets and summonses qualify as "special notices"

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1. Art 14.
2. Arts. 24 a and 82 a added by by-law 2595.
3. Art. 10 ("matériel usagé" "second-hand material"), art. 11 ("matériel neuf" "new material"), and art. 14.
4. Art. 14 (official stamp bearing "approuvé approved") and art. 15 ("approuvé approved" and "inspecté inspected").
5. One city stated: "...les procédures devant la Cour municipale de la Cité sont en Français sauf que si l'accusé est de langue Anglaise; L'acte d'accusation, le plaidoyer et autres procédures inhérentes sont faites en Anglais."

which are served on the recipient and are not required to be bilingual by Quebec law.[1]

In New Brunswick, 4 municipalities said that they only use English. The City of Edmunston did not reply. Its reply might have been instructive since 85% of its population is French.

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1. cf. 8.03.

E. PERMITS, TENDERS AND BOND ISSUES

8.12 Municipal permits.-

Our inquiry about the language in which applications for municipal business or construction permits were required to be drafted was not answered satisfactorily, perhaps due to poor draftsmanship of the question. Eight Quebec municipalities said that permits could be requested in either language and one (the City of St. Lambert) that they had to be applied for in both languages. Only Sorel said that requests had to be in French. Granby had no language regulation.

New Brunswick law does not seem to have any provision and all permit requests are printed in English.

8.13 Calls for tenders.-

City by-laws generally require that all requests for tenders on public works be published in newspapers. We asked our respondents to state whether their by-laws contained any language provisions. Quebec municipalities replied as follows: 2 said that such calls for tenders could be in either French or English, and 6 that they had to be in both languages. Four stated that French was the only language provided for. One had no regulation on the subject.

Since calls for tenders are to all intents and purposes public notices, they should be in both languages, except when the municipality has been exempted from bilingual publication.[1] There is

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1. cf. 8.03.

some doubt, thus, as to the validity of many calls by Quebec municipalities, at least if their replies to our questionnaire are correct.

In New Brunswick, 4 municipalities answered that English was the language of publication, but Moncton declares that its notices would be published in both French and English.

8.14 Bond issues and debentures.-

Our inquiry about the regulations dealing with the language of bond issues or debentures met with the following replies from Quebec: 3 municipalities stated that either language would be used and 9 that both languages were required. Three municipalities had no regulations on the point.

The City of Montreal by-laws provide that all loan documents be bilingual. By-law 2369 which establishes the manner in which loans shall be made, states that debentures shall be drawn up in both French and English.[1] An exception is made, however:

> "If an issue of debentures is payable in lawful money of a foreign country, the debentures may be drawn up either in the French language only, or in the English language only, or at the same time in the French language or in the English language, and in the language or the languages of the country in the money of which they shall be payable and in the latter case the French language or the English language shall prevail as concerns the interpretation."[2]

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1. Art. 3 as modified by by-law 3025
2. Art. 3 as modified by by-law 2628.

Article 6 of by-law 2753 creating the Working Capital Fund of the City of Montreal, requires all treasury bills, notes or other instruments issued on the said fund to be drawn in both languages. Prior to by-law 2369 which now governs all loans by the City of Montreal, the specific by-laws authorizing municipal borrowing would always state that the bonds need be bilingual.[1]

In New Brunswick English was the usual language except in the case of Edmunston which said that the choice of language was optional.

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1. e.g. by-laws 1960, 2014, 2025, 2056, 2057, 2058, 2071, 2073, 2074, 2078, 2091, 2108, 2127, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2155, 2156, 2157, 2161, 2191, 2201, 2214, 2233, 2253, 2284, 2315, 2323, 2324, 2326, 2357, 2370, 2375, 2384, 2391, 2392, 2406, 2408, 2411, 2421.

F. LANGUAGE QUALIFICATIONS FOR MUNICIPAL EMPLOYMENT

8.15 Quebec municipalities other than Montreal.-

Only the City of Sorel and the City of Sainte-Foy out of 16 Quebec municipalities replying to our questionnaire, stated that they required their employees to know either French or English. Eleven stated that job applicants should know both French and English. Comments made in this connection are worth noting. One municipality said that a knowledge of both languages was required only in the case of "des fonctions supérieures". Another city declared that French was always a prerequisite, but that English was needed for only a few positions. A third city admitted that English was only required of those employees who might be in contact with the public. One city said that all its employees were bilingual as a matter of fact. Another one required French and "quelques notions d'anglais".

8.16 The City of Montreal.-

The City of Montreal, we were informed, has 417 different categories of employees. For 416 of these categories an ability to speak and write both languages is required. The one exception is the "préposé à la planification" who is only required to "posséder un minimum de connaissance de la langue seconde".[1]

The only provision we have been able to find in the Charter of the City of Montreal[2] is s. 734 dealing with the two

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1. cf. competition 64-171 dated October 8, 1964 issued by the personnel department of the City of Montreal. An examination of sample employment notices from the City of Montreal shows that the language qualifications required vary from "une connaissance raisonnable de l'anglais" for policemen, to an ability to speak and write English and French "correctly" (competition 65-36, 65-81). Generally the requirement is simply to speak and write both languages (64-73, 65-85).
2. 1959-60 8-9 Eliz. II, c. 102.

auditors appointed by the Executive Committee to report on the municipal accounts. One of these auditors must be a French-speaking accountant and the other one English-speaking. The by-laws, on the other hand, contain several pertinent positions. By-law 453, which has now fallen into desuetude required bus drivers to be able to speak both languages[1]. Tourist guides must speak French and English "fluently".[2] The general by-law is by-law 2612 concerning the Civil Service Commission. Article 13 thereof states:

> "Every examination may be taken in English or in French, at the discretion of the candidate, except as concerns the minimum of knowledge of one of such languages or other languages."

For instance, by-law 2655 concerning the Police Department, specifically states that applicants must satisfy the requirements of by-law 2612. Taxi drivers are required to be bilingual:

> "A licence to drive shall only be issued to a person who is a competent driver and who is at least twenty one (21) years of age.
>
> According to this by-law a competent driver shall be the person who, in addition to the ordinary meaning given to this word, possesses a certificate from the Montreal Municipal Tourist Bureau to the effect that he is bilingual and that he has knowledge of the territory, ..."[3]

Originally two auditors were appointed to examine the books of the Montreal Transportation Commission[4], one French-speaking and one

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1. s. 5.
2. By-law 2519, art. 4 (c).
3. By-law 2745, art. 18. Personal observation demonstrates that this by-law is generally honoured in its breach.
4. By-law 1981, art. 15.

English-speaking, as is still the case with the city auditors. But this was changed in 1964 and there is no longer any language requirement.[1] The secretary of the Transportation Commission, however, must be bilingual.[2] Attention should also be drawn to the old by-law 105 concerning health which creates a Board of Health composed of 21 members, two of whom shall be practising pharmacists, one French-speaking and one English-speaking.[3] It would thus appear that the City of Montreal not only requires a considerable measure of bilingualism from its own employees and officials, but will make a knowledge of both languages a prerequisite for municipal permits to exercise certain professions which are in constant contact with the public, such as those of tourist guides and taxi drivers.

8.17 New Brunswick.-

In New Brunswick city employees are required only to speak English except in Edmunston where a knowledge of both languages seems to be required.

8.18 Priority of one language over the other.-

To the question as to whether officers and employees of the municipality were required to speak one language rather than another, we received, in Quebec, 6 replies that French was preferred, and one reply that English was required first. The City of Sainte-Foy replied that employees were required to speak French and preferably also English. Nine other municipalities had no such requirement. In New Brunswick the only language officially required of officers and employess is English.

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1. By-law 2909 modifying art. 15 of by-law 1981.
2. By-law 1981, art. 14.
3. s. 1.

G. CORRESPONDENCE WITH OR BY THE MUNICIPALITIES.

8.19 Language of correspondence.-

Quebec municipalities conduct the overwhelming majority of their correspondence exclusively in French. English is used relatively little and very few municipalities have a large measure of bilingualism. When they do, bilingualism seems to be confined to notices, forms, statements of account and tax assessments. Such notices and assessments might qualify as "special notices" which as we have seen[1] need not be bilingual. Furthermore, most municipalities claim to receive correspondence in the same linguistic proportions. The replies are tabulated in the following tables:

TABLE VIII-5

Language of correspondence sent out by the municipalities:

Municipality	French only	English only	Both languages
Arvida[2]			100%
Gatineau	95%	5%	
Granby	95%	5%	
La Tuque	100%	nil	
Longueuil	95%	5%	
Quebec[3]	90%	10%	

(cont'd.)

1. In 8.03.
2. The City of Arvida stated: "Les avis, les formules, les comptes de taxes, etc., envoyés aux citoyens, sont toujours rédigés en français et en anglais."
3. The City of Quebec said: "Tous les comptes de taxes et redevances municipales sont rédigés en français et en anglais."

Table VIII-5 (cont'd.)

Municipality	French only	English only	Both languages
Sainte-Foy	99%	1%	
Saint-Jean	90%	10%	
St. Lambert	50%	50%	
Sainte-Thérèse	99%	1%	
Sept-Iles	90%	9.5%	.5%
Shawinigan	95%	3%	2%
Thetford Mines	99%	½%-1%	½%-1%
Trois-Rivières			100%
Val D'Or[1]	80%	20%	10%
Sallaberry de Valleyfield	92%	8%	
Sorel	99%	1%	
AVERAGE %:[2]	91.2%	8.6%	

TABLE VIII-6

Language of correspondence received by municipalities:

Municipality	French only	English only	Both languages
Arvida	95%	5%	
Gatineau	95%	5%	
Granby	95%	5%	
La Tuque	99%	1%	
Longueuil	95%	5%	
Quebec	90%	10%	
Sainte-Foy	99%	1%	
Saint-Jean	90%	10%	
St. Lambert	50%	50%	

(cont'd.)

1. This reply is obviously inaccurate since it totals 110% as against a possible maximum of 100%, but it still indicates that the overwhelming bulk of communications emanating from the community is in French only.
2. These average percentages are obviously inaccurate in view of the gaps in some replies or errors of computation made by our respondents. At best the averages are indicative of general trends.

Table VIII-6 (cont'd.)

Municipality	French only	English only	Both languages
Ste-Thérèse[1]	99%	1%	
Sept-Iles	95%	5%	
Shawinigan	99%	1%	
Thetford Mines	99%	1%	
Trois-Rivières	---	---	
Val D'Or	80%	20%	
Sallaberry de Valleyfield	92%	8%	
Sorel	99%	1%	
AVERAGE %:	91.9%	8.%	

In New Brunswick, except for the City of Edmunston, all correspondence sent or received by the municipalities is practically always in English. In Edmunston, however, 40% of the correspondence both issued and received is in French.

8.20 Municipal translation offices and interpreters.-

In reply to our queries, 14 Quebec municipalities stated that they had no need for interpreters and another 2 that they required interpretation only very occasionally from one language to the other.

1. The City of Ste-Thérèse stated: "Les formules de factures sont en deux langues."

We have been advised that the City of Montreal has three interpreters. In New Brunswick, interpreters are never used. Nor had any municipality replying in Quebec or in New Brunswick a special translation office to translate such documents as might have to be transposed from one language to the other. When required, official documents, and particularly by-laws and public notices, are translated by a variety of municipal officers: those mentioned most often are the city clerk or the city manager, but sometimes it is the department head, a secretary, or some other member of the municipal administration. In New Brunswick, the cities of Fredericton and Moncton both stated that they had bilingual personnel who could make such translations as were needed. The impression derived from the replies to our questionnaire is that, although no city appears to have a formally organized translation service, all municipalities have sufficient internal resources not to need a systematic translation system. The situation for municipalities is eased naturally by the fact that the overwhelming majority of all correspondence sent and received by municipalities appears to be in one single language as is evident from the foregoing tables VIII-5 and VIII-6.

8.21 Languages requiring translation.-

As could have been guessed from these tables, our respondents stated that in the overwhelming majority of cases translation is required from French to English rather than the other way around (11 out of 17 replies). Only one municipality had more translations from English to French than the reverse; and one said that the requirements were about the same for each language. In New Brunswick, one municipality required

mainly translation from French to English, while another two had the reverse situation to cope with.

H - PROVINCES OTHER THAN QUEBEC

8.22 The law of other provinces.-

Very little, if any, pertinent legislation is to be found in other provinces. Nevertheless, we would like to draw attention to provisions in the following provinces:

(a) Alberta.- The Municipal Districts Act[1] provides that:

> "No person is qualified to be elected a member of the council of a municipal district unless at the date of his nomination
>
> (a) he can read and write in the English language."

The Alberta City Act[2] requires that all candidates to the mayoralty or the council of a city must "speak, read and write the English language"[3].

(b) Manitoba.- The charters of the cities of Brandon[4] and East Kildoman[5] declare that no one is eligible for election as mayor or alderman unless he is able to read or write the English language. On the other hand, the Metropolitan Winnipeg Act[6] states that to qualify for election as member of the Metropolitan Councils it is sufficient to be "able to read the English or French language and write it from dictation."[7]

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1. 1955, R.S.A., c. 215, s. 85.
2. 1955, R.S.A., c. 42.
3. s. 96 (1).
4. 1955, 3-4 Eliz. II, S.M., c. 86, s. 7 (1).
5. 1957, 5-6 Eliz. II, S.M., c. 80, s. 11 (1) (b).
6. 1960, 8-9 Eliz. II, S.M., c. 40.
7. s. 20 (1) (c).

I. CONCLUSION

8.23 General comments.-

None of the municipalities who bothered to do so made comments that were particularly significant. The City of Edmunston, however, expressed the opinion that since there were no statutes providing for linguistic usage in municipal affairs, the use of French or English was optional. As we have seen, Edmunston is bilingual to a considerable extent.

8.24 General conclusions.-

Municipal administration is by definition local. It responds essentially to local factors. From the foregoing survey it would appear that the respect of bilingualism by any given city or town is not so much dependent on the law as on the size of the linguistic minority in its midst and on the attitudes of the city government to that minority. To the undersigned it seems proper that the degree of bilingualism vary from community to community according to circumstances. It is obviously absurd to require a municipality composed entirely of French-speaking citizens and situated in an essentially French environment to pass its by-laws, draft its minutes and publish its notices in two languages. Difficulties only arise when it comes to determining at what stage a minority becomes entitled to demand bilingualism. How many English-speaking citizens should there be in a municipality before its by-laws have to be bilingual? Short of establishing percentages arbitrarily, the present method of always requiring bilingualism except when the municipality has been exempted may be the most flexible manner of solving the problem.[1] It enables

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1. In Quebec, at any rate.

the provincial authorities to decide on the merits of each case. Admittedly, language has not yet become an issue in municipal affairs, but it is easy to foresee that it could turn into a very delicate one before very long. And while we have studied the problem especially from the point of view of Quebec's experience, the question has national ramifications because it is impossible to expect Quebec to continue respecting the rights of English minorities in its municipalities if other provinces are not prepared to do the same with the sizeable French-speaking minorities in some of their cities and towns. In fact, in some cases, such as Edmunston in New Brunswick, more than two-thirds of the inhabitants are French. The implementation of bilingualism in the municipal institutions of other provinces may present some practical difficulties but it appears to us that no time should be lost in giving serious examination to the possibility of official bilingualism at the municipal level in every Canadian community where the size of the linguistic minority warrants it.

At the present time there does not appear to exist any legal impediment to any municipality anywhere in Canada, no matter how small its linguistic minority, which desires to use a minority language in the conduct of its affairs.[1] Judging from the replies to our questionnaire, some municipalities in New Brunswick do in fact use French to a more or less considerable extent. The same situation might perhaps be found in Ontario which has a sizeable concentrated

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1. cf. chapter XIII.

French minority.[1] If it were deemed necessary to give some constitutional recognition to the linguistic rights of minorities at the municipal level, we would suggest that serious thought be given to a formula which would permit, or require, municipal authorities to make available official translations of by-laws and the use in the course of council meetings, in addition to the language of the majority, the language of a linguistic minority exceeding a given percentage of the population. In Quebec, it would appear that bilingualism becomes a significant factor when the linguistic minority reaches about 20%. Since many of its French-speaking citizens are bilingual - a situation not prevalent among the English-speaking majorities in other provinces - it might be easier to conduct municipal affairs bilingually in this Province. It might, thus, not be inadvisable to set the minimum level outside Quebec at a figure around 30%, which would reflect also the national proportion of French-speaking Canadians. But before establishing a definite percentage, further studies might be required to determine how many Canadian communities would be affected,[2] to analyse the inevitable practical difficulties and approximate costs of such change, and to provide solutions to the more apparent difficulties. While such arbitrary formula may not always be the best in all circumstances and may fail to take into account local particularities, it seems to

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1. cf. 4.40.
2. The census figures are not helpful since they provide linguistic breakdowns only for municipalities exceeding 10,000 inhabitants.

the undersigned, at least outside Quebec, to be the most acceptable. Nor do we see any reason, other than tradition, to deny the application of the same formula to Quebec municipalities. As we have pointed out, Quebec municipalities are now required to conduct some of their affairs in two languages, even when the English minority might be less than 5% of the total population. This can lead to absurdities. The exemption from such bilingual requirements can only be granted to the less important municipalities governed by the Municipal Code[1] or by special statute. Naturally, nothing stops Quebec from changing its laws in this respect, except naturally insofar as municipal courts are concerned which will continue to be governed by s. 133 of the B.N.A. Act.[2]

On the other hand, it would be politically impossible to provide constitutional guarantees to the French minorities outside Quebec, without giving equivalent protection to the English minorities in Quebec. The 30% formula which we have proposed for municipalities in the other provinces would work unnecessary hardships in Quebec where we might suggest that the 20% proportion be instituted. Obviously, while this double formula appears to be the most just in the circumstances, it might not appeal to some of the governments involved. The alternative would be either to lower the required proportion outside Quebec or to arrive at a compromise figure in order to reach uniformity throughout the country. It will be recalled that an analogous solution was suggested in connection with courts of justice[3].

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1. cf. 8.03.
2. cf. 4.18.
3. cf. 4.40

ANNEX VIII-A (1)

ROYAL COMMISSION OF INQUIRY ON BILINGUALISM AND BICULTURALISM

QUESTIONNAIRE CONCERNING THE CHARTER, BY-LAWS AND THE ADMINISTRATION OF TOWNS, CITIES AND MUNICIPALITIES

1. Please indicate the division of your population according to your own statistics.

   a) those of French origin _____

   b) those of English origin _____

   c) others _____

2. In the constitution of your municipality, are there any articles which specify situations in which ....

   a) it is mandatory to use French? ____yes ____no

   b) it is mandatory to use English? ____yes ____no

   c) it is mandatory to use both French and English? ____yes ____no

   d) it is optional to use either French or English? ____yes ____no

   e) it is mandatory or optional to use a language other than French or English? ____yes ____no

   f) Citation numbers of these articles:

      articles _____ _____ _____ _____

3. Are your city by-laws drafted ...

a) sometimes in French? ____yes ____no

b) always in French? ____yes ____no

c) sometimes in English? ____yes ____no

d) always in English? ____yes ____no

e) Please indicate why they are drafted in French:

. . . . . .

f) Please indicate why they are drafted in English:

. . . . . .

4. Are your city by-laws published...

a) in French only? ____yes ____no

b) in English only? ____yes ____no

c) both in French and in English? ____yes ____no

d) both in French and in English on the same page? ____yes ____no

5. In most cases, are your by-laws translated . . .

a) from French to English? ____yes ____no

b) from English to French? ____yes ____no

c) from either French or English to another language? ____yes ____no

6. Are public notices and special notices drafted . . .

a) either in French or in English? ____yes ____no

b) in French only? ____yes ____no

c) in English only? ____yes ____no

d) Please indicate why they are drafted in French only:

_____

_____

e) Please indicate why they are drafted in English only:

_____

_____

7. Has the Minister of Municipal Affairs authorized the publication of the by-laws, resolutions, notices, ordinances in one language only by a decree or order-in-council?

a) yes _____ publication in French

What was the date of the decree? _____

b) yes _____ publication in English

What was the date of the decree? _____

c) no _____

8. How often are the notices used by the city written . . .

	Always	Usually	Sometimes	Never
a) in both English and French?	( )	( )	( )	( )
b) in French only?	( )	( )	( )	( )
c) in English only?	( )	( )	( )	( )

9. Are traffic tickets, summonses drafted by your administration...

a) both in English and in French? ___yes ___no

b) in French only? ___yes ___no

c) in English only? ___yes ___no

10. Are the road signs put up by your administration . . .

a) both in French and in English? ___yes ___no

b) in French only? ___yes ___no

c) in English only? ___yes ___no

11. Are safety signs, for example "défense de fumer" or "No smoking" etc... drafted by your administration for the Fire Prevention Department, Public Services, Construction, etc. ...

a) both in French <u>and</u> in English? ___yes ___no

b) in French <u>or</u> in English? ___yes ___no

c) in French only? ___yes ___no

d) in English only? ___yes ___no

12. Do city by-laws provide that permits for construction, for business operations, etc. ... must be requested ...

a) in French <u>or</u> in English? ___yes ___no

b) in French <u>and</u> in English? ___yes ___no

c) in French only? ___yes ___no

d) in English only? ___yes ___no

13. Do your city by-laws require publication in newspapers of all requests for tenders for public works ...

a) in French or in English? ___yes ___no

b) in French and in English? ___yes ___no

c) in French only? ___yes ___no

d) in English only? ___yes ___no

14. Do the regulations permit the bonds or debentures issued by your town to be drawn up ...

a) in French or in English? ___yes ___no

b) in French and in English? ___yes ___no

c) in French only? ___yes ___no

d) in English only? ___yes ___no

e) in any other language? ___yes ___no

f) if "yes", which languages? _____

15. Have you a by-law concerning the choice of name for streets, public places, historical sites?

No _____

Yes _____ (if "yes", please indicate the provisions concerning language and culture)

_____

16. In the case of difference between French and English texts, do your by-laws contain any rules giving priority to either text?

a) the French text prevails ___yes ___no

b) the English text prevails ___yes ___no

c) most consistent with the by-law ___yes ___no

d) rules of interpretation (Please state which ones)

_____

17. Does any provision, in your employment specifications, require the use of ...

a) French or English? ___yes ___no

b) both French and English? ___yes ___no

c) other languages ___yes ___no

d) Please give your comments: _____

18. Does your city have a translation office?

a) no ___ If "no", who prepares the translation?

_____

b) yes ___ How many translators?

If "yes" please indicate the type of documents translated:

Laws _____

By-laws _____

Correspondence _____

Notices _____

etc. _____

19. In general, is translation made . . .

_____ more often from English to French?

_____ more often from French to English?

_____ about equally often in each direction?

20. Does your administration have interpreters?

no _____

yes _____ How many interpreters? _____

21. Is it ever necessary to use an interpreter . . .

a) in a council meeting?

no _____

yes _____ for translations from French to English

yes _____ for translations from English to French

yes _____ either for translations of any other language to French orEnglish

b) in communications with the public?

no _____

yes _____ for translations from French to English

yes _____ for translations from English to French

yes _____ either for translations of any other language to French or English

22. Are the officers and employees of your administration required to speak one language rather than another?

Yes _____ French

Yes _____ English

Yes _____ Another language : _____

No _____

23. A - Is the spoken or business language during council meeting generally . . .

a) French? ___yes ___no

b) English? ___yes ___no

B - Are the minutes of the Council . . .

a) in French? ___yes ___no

b) in English? ___yes ___no

c) in both French and English? ___yes ___no

24. A - Of the total correspondence sent to citizens by the city administration over the past year, what percentage would you estimate was sent in French only, in English only, and in both English and French?

a) in French only _____%

b) in English only _____%

c) in both English and French _____%

Total 100%

B - Of the total correspondence sent <u>to</u> the city administration from members of the public during the past year, what percentage would you estimate was in French, in English and in languages other than French or English?

a) in French _____%

b) in English _____%

c) in languages other than French or English _____%

Total 100%

25. Would you please add your comments, your criticism of this questionnaire relatively to the use of the French and English languages. These comments will remain confidential.

CHAPTER IX

THE LINGUISTIC REGULATIONS OF PUBLIC ADMINISTRATION AND PRIVATE ACTIVITIES

A - INTRODUCTION

9.01 Introduction.-

In the previous chapter we have seen that the language in which some aspects of the administration of municipal affairs or even of private activities are conducted may be subject to legal regulation. The same situation obtains at the provincial or federal level. The language in which the authorities must communicate with the citizens or advise the public at large; the language of the official forms and returns the citizen must submit to the authorities; the language in which certain products which are toxic or dangerous must be labelled; all these are frequently regulated by law. Even the linguistic aspects of a number of professional activities can lead to legislation: the language qualifications for admission to the practice of a given profession; the minimum knowledge of the current language needed for certain trades, particularly those requiring the observance of safety measures as in mining; and the language in which qualifying examinations can or must be passed. Even private activities - when their importance to society at large warrants it - can require linguistic regulation: e.g. the documents, bills of lading and notices issued by public carriers; labour contracts; and trade marks.

The purpose of the present chapter is to examine the federal and provincial legislation dealing with these ancillary aspects of public administration. The prime purpose of the laws and regulations discussed in the present chapter is not so much to govern language use as to regulate certain official or private activities. On the other hand, the linguistic aspects of such regulations both reflect the attitude of a given jurisdiction to linguistic rights and underscore the complexities of governing a bilingual or multilingual society.

It will be recalled that the B.N.A. Act does not contain any provision in this respect since s. 133 is limited to stipulating the language of legislation and of court proceedings in the federal jurisdiction and in Quebec.[1] There is no reference to the language of administration. In fact, as we will see in chapter XIII, language as such does not have a clear legal status in most Canadian jurisdictions. Such legislation as there is on the subject is generally incidental or secondary.

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1. cf. 2.02.

9.02 Historical background.-

Bilingual administration of public affairs has a tradition in Canada which goes back to the earliest days after the Conquest.[1] Formal legislative recognition of the right of citizens to communicate with, and receive communications from, the administration in both languages only began to appear regularly around the middle of the last century. For instance, in 1845 we find that the returning officer upon receipt of a writ of election of the Legislative Assembly of Lower Canada must cause public notice to be given of the date of the election in both French and English.[2] A number of private or public statutes in the same year require specified public notices to be bilingual.[3]

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1. cf. 1.73.
2. An Act to repeal certain Acts therein mentioned, and to consolidate the laws relating to the election of Members to serve in the Assembly of this Province, and to the duty of Returning Officers, and for other purposes, R.A.O.L.C. 1845, Class A, c. 4, s. 9.
3. An Ordinance to authorize certain further improvements in the Harbour of Montreal, to establish new rates of Wharfage therein, to authorize the Commissioners for the improvement of the same to borrow a further sum of money, and for other purposes relative to the said Harbour, R.A.O.L.C. 1845, 4 Vict., c. 12, s. XIV (advertisement of intended repayment of monies borrowed); An Ordinance to suspend in part certain Acts therein mentioned, and to establish and incorporate a Trinity House in the City of Montreal, R.A.O.L.C. 1845, 2 Vict. (3), c. 19, s. IV (notice of meetings of wardens); An Ordinance to declare and regulate the tolls to be taken on the Bridge over Cap Rouge River, and for other purposes relative to the said bridge, R.A.O.L.C. 1845, 4 Vict., c. 21, s. VIII (posting of ordinance and table of tolls in both languages); An Act to authorize the Commissioners appointed under a certain Act passed in the eleventh year of the reign of His late Majesty, intituled , An Act to provide for the improvement and enlargement of the Harbour of Montreal, to borrow an additional sum of money, and for other purposes therein mentioned, R.A.O.L.C., 1845 (Class G), s. V (notice of repayment of sums borrowed); An Act to amend an Act passed in the forty-fifth year of His Majesty's Reign intituled, An Act for the better regulation of Pilots and Shipping in the Port of Quebec and in the Harbour of Quebec and Montreal, and for improving the navigation of the River St. Lawrence, and for establishing a fund for decayed Pilots, their Widows and Children, R.A.O.L.C. 1845, 51 Geo. III, c. 12, s. XI (bilingual notice of by-laws, rules and regulations dealing with cul de sac in the lower town of Quebec); An Act respecting the General Abolition of Feudal Rights and Duties, C.S.L.C. 1861, c. 41, s. 12 (bilingual posting and publication of notice or schedule of commutation price of feudal rights).

An 1849 consolidation of the electoral laws of United Canada provides for public notice of the writ of election and for proclamation of the returning officer's commission to be made "in the English language in Upper-Canada and in the English and French languages in Lower-Canada"[1]. Some statutes just prior to Confederation require public notices to be given but do not stipulate the language in which these have to be done: e.g. wharfingers and warehousemen have to advertise unclaimed goods in the cities of Quebec and Montreal[2] or notices of sale of immoveables by forced licitations are simply said to have to be given in the Canada Gazette (although the Gazette was bilingual)[3] or the language in which clerks of the peace in Quebec, Montreal and Three-Rivers are required to advertise unclaimed goods for sale is not specified[4].

But the 1861 Corporate Rights Act[5] provided for notice in both languages of the sale of immoveables belonging to illegal corporations[6] and of writs of mandamus to order elections of officers[7].

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1. An Act to repeal certain Acts therein mentioned, and to amend, consolidate, and reduce into one Act, the several Statutory provisions now in force for the regulation of Elections of Members to represent the People of this Province in the Legislative Assembly thereof, 12 Vict. (1849) c. 27, respectively ss. IX and XII.
2. An Act respecting Unclaimed Goods in the hands of Wharfingers and others, C.S.L.C. 1861, c. 66, s. 1.
3. An Act respecting forced Licitations, C.S.L.C. 1861, c. 48, s. 3.
4. An Act respecting goods unclaimed in the possession of the Clerks of the Peace, C.S.L.C. 1861, c. 104, s. 2.
5. An Act concerning the protection and enforcement of Corporate Rights, C.S.L.C. 1861, c. 88.
6. s. 10 (4).
7. s. 14 (3).

Bilingual notices in newspapers and at church doors of the sale of seized immoveables belonging to unknown persons were provided for in another statute[1]. Provisions were also made for bilingual notices in all matters of insolvency[2], of general meetings of mutual insurance companies[3] and for the first meeting of subscribers to the Mount Royal Railway Company[4].

These provisions are typical of the expressed desire of the legislator to ensure the adequate circulation and comprehension of public notices. They also show an awareness of the bilingual character of the society to which they were aimed. Presumably other provisions of a similar type exist on the pre-Confederation statute books, but they would only provide additional illustrations.

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1. An Act respecting the Sale under Execution of hypothecated Immoveables of unknown or uncertain Owners, C.S.L.C. 1861, c. 49, ss. 3 and 4.
2. An Act respecting Insolvency, Canada, 27-28 Vict. (1864), c. 17, s. 11.
3. An Act to amend Chapter Sixty-eighth of the Consolidated Statutes for Lower Canada, respecting Mutual Insurance Companies, Canada, 29 Vict., (1865) c. 13, s. 2.
4. 1865, 29 Vict., c. 82, s. 10.

B - PUBLIC NOTICES

9.03 Introduction.-

A multitude of laws require official bodies or individuals to give certain public notices, either by publication in the official Gazettes, or in designated newspapers, or both, or in a variety of other fashions. Much of this legislation contains provisions governing the language in which these notices are to be published. Naturally, this is particularly the case with Quebec statutes. But, as we will see, some provisions are also found in the statutes of other provinces and in some federal legislation.

9.04 Federal law.-

Many federal statutes deal with the language of public notices. For instance, the Bank Act[1] provides that certain notices of sale of property covered by security, when the sale or the property are in Quebec, must be made in both an English-language and a French-language newspaper[2]. The Canada Elections Act[3] requires notices of grant of a poll to be published in both languages[4]. The Act also provides[5]:

> "Within two days after the receipt of the writ of election or within six days after he has been notified by the Chief Electoral Officer of the issue of such writ, whichever is the sooner, the returning officer shall issue a proclamation ... in theEnglish and French languages in every electoral district

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1. 1953-54, S.C., c. 48.
2. ss. 82 (3) (d), 89 (4) (a) (ii), 89 (4) (b) (i) and (ii).
3. 1960, S.C., c. 39.
4. s. 25 (2).
5. s. 18 (1).

> in the Provinces of Quebec, Manitoba and New Brunswick, and in every electoral district where it should be done in the opinion of the Chief Electoral Officer, and in the English language only in other electoral districts ..."

Copies of the notice of grant of a poll shall be issued in the same manner[1]. The Civil Service Act[2] states that notice must be given in English or French, or both, of a proposed competition "as ... will give all eligible persons a reasonable opportunity of making an application"[3]. Under the Quebec Savings Banks Act[4] public notices by the directors of the holding of an annual or other meetings of shareholders shall be given in a newspaper at the place of the head office and the notices published "shall be printed in both the English and French languages"[5]. A similar notice is required for a declaration of dividends[6]. A notice of sale by auction of securities held as collateral by the bank must be given in at least two newspapers in or nearest to the place of sale, one of which newspapers must be English and the other one French[7]. The Railway Act[8] requires all notices to be given in Quebec to be published in both the English and French languages[9]. Timetables which are to be

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1. s. 25 (2).
2. 1960-61, 9-10 Eliz. II, S.C., c. 57.
3. s. 39.
4. 1952, R.S.C., c. 232.
5. s. 5 (1).
6. s. 17.
7. s. 39.
8. 1952, R.S.C., c. 230.
9. s. 298 (4).

used within the limits of the province of Quebec must be printed in both languages[1]. Blackboard notices of overdue trains and expected arrivals shall in the province of Quebec be written in English and French and in all other provinces in English[2]. All timetables to be used in Quebec must be bilingual[3]. The Winding-Up Act[4] requires notice of application for a winding-up order of a bank whose head office is in Quebec to be published in one newspaper in the English language and another one in the French language[5]. Many federal statutes contain notice requirements without stating in what languages[6].

Some federal subordinate legislation also contains relevant provisions. The Immigration Regulations provide for notices in French and English as well as in the language spoken by the majority of immigrants on board a ship bringing immigrants to Canada to advise them as to food facilities, safety rules and the protection of immigrants[7]. The Penitentiary Service Regulations[8] require the Commissioner to give notice of examination for candidates to positions in the Penitentiary Service "in the English or French language, or both".

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1. s. 305 (2).
2. s. 306 (3).
3. s. 305 (2).
4. 1952, R.S.C., c. 296.
5. s. 159 (2).
6. e.g. Animal Contagious Diseases Act, 1952, R.S.C., c. 9, ss. 3 and 9; Bank Act, supra, ss. 3 (1) and (3), 16 (4), 21 (31), 30 (2), 33 (21), 36, 37, 40, 55, 57, 65, 76, 80, 88 (4), 112, 113 (2), 116, 117, 128, and 132 (2); Bridges Act, 1952, R.S.C., c. 20, s. 4; Canada Lands Surveys Act, 1952, R.S.C., c. 26, s. 10; Canada Shipping Act, 1952, R.S.C., c. 29, s. 49; Canada Elections Act, 1960, S.C., c. 39, s. 56 (5).
7. s. 5 (1)
8. P.C., 1962-302, s. 1.25.

9.05 Quebec law.-

Because of the linguistic distribution of population in the Province and its bilingual traditions, Quebec has the most thorough and complete legislation dealing with the language of public notices. There are three basic categories of public notices in Quebec: those which are required to be published in the Quebec Official Gazette; those which must be printed in newspapers alone or in newspapers and/or in a different manner; and notices which must be posted or given in a different manner.

(a) Notices in the Quebec Official Gazette.- The general rule is found in s. 23 of the Provincial Secretary's Department Act[1]:

> "All advertisements, notices, and documents whatever, which are required to be published, shall be published in the Quebec Official Gazette, unless some other mode of publication is prescribed by law."

The Act contains no provisions as to the language of notices published in the Gazette[2]. Consequently several statutes stipulate specifically that publication in the Quebec Official Gazette must be bilingual[3]. But normally, statutes in Quebec merely mention the requirement of publication in the Gazette without specifying that publication must be in both languages.[4] The practice, however, is for all publication

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1. 1964, R.S.Q., c. 54.
2. cf. 3.39 of the present report.
3. e.g. arts. 716, 673 of the Code of Civil Procedure; Cities and Towns Act, 1964 R.S.Q., c. 193, s. 551; Religious Congregations Lands Act, 1964, R.S.Q., c. 306, s. 13.
4. e.g. arts. 1896 and 1048 of the Code of Civil Procedure; Cities and Towns Act, 1964, R.S.Q., c. 193, s. 2 (2); Courts of Justice Act, 1964, R.S.Q., c. 20, s. 328 (e); Superior Council of Education Act, 1964, R.S.Q., c. 234, s. 28; Water Board Act, 1964, R.S.Q., c. 183, s. 16; Moving Pictures Act, 1964, R.S.Q., c. 56, s. 6; Collective Agreement Decrees Act, 1964, R.S.Q., c. 143, s. 5; Colonisation Land Sales Act, 1964, R.S.Q., c. 102, s. 4; Church Incorporation Act, 1964, R.S.Q., c. 305, s. 4; Amusement Clubs Act, 1964, R.S.Q., c. 298, s. 4; Executive Power Act, 1964, R.S.Q., c. 9, s. 7; Companies Act, 1964, R.S.Q., c. 271, s. 127 (1) (d), 127 (2); Municipal Commission Act, 1964, R.S.Q., c. 170, s. 39, 52 and 57.

in the Quebec Official Gazette to be bilingual[1]. Furthermore, in addition to publication in the Gazette, the law frequently also requires insertion of the notice within specified delays in French and English newspapers[2].

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1. cf. 3.39 of the present report.
2. Art. 1896 of the Civil Code; arts. 716, 673 and 1092 of the Code of Civil Procedure; Cities and Towns Act, supra, s. 2 (2) and 551; Water Board Act, supra, s. 13; Collective Agreement Decrees Act, supra, s. 5; Church Incorporation Act, supra, s. 4 (here the language of newspaper publication is not specified); Religious Congregations Lands Act, supra, s. 13 (bilingual notices are required, but not necessarily in newspapers of different languages); Amusement Clubs Act, supra, s. 4; Companies Act, supra, s. 127 (1) (d); Municipal Commission Act, supra, s. 39 and 52; Insurance Act, 1964, R.S.Q., c. 295, ss. 11 and 27; Railway Act, 1964, R.S.Q., c. 290, s. 199.

(b) Notices in newspapers.- In addition to notices which are required to be published in both the Quebec Official Gazette and in various newspapers, there are numerous provisions of law requiring the publication of certain notices in newspapers. Normally the law states specifically that such notices are to be published in both French and English, or that they have to be published in a French and in an English newspaper.[1] In the latter case the underlying assumption is that the notice will be published in French in the French-language newspaper and in English in the English-language newspaper. This is the normal procedure. But in the absence of specific provision to that effect, one may wonder whether publication in newspapers published in both languages of such notices drawn in French only or English only would meet the demands of the law.

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1. Civil Code, arts. 1571a (notice of sale of a debt of an absent debtor), 1571d (notice of registration of sale of a class of debts), 1671a (notice of sale of objects left with jeweller for more than 3 years); Code of Civil Procedure, arts. 135a (synopsis of order permitting summoning of heirs by newspaper), 136 (synopsis of order permitting summoning of absent defendant by newspaper), 639 (notice of sale of seized moveable property), 717 (notice of sale of seized immoveable), 719a (notice of sale of seized immoveables), 1029 (notice of hypothecary actions against unknown proprietors), 1068 and 1069 (notice of petition for confirmation of title to immoveable), 1352 (notice of sale of immoveable belonging to minor), 1414 and 1421d (notice of intended application for letters of verification in ab intestate succession); Gas, Water and Electricity Companies Act, 1964, R.S.Q., c. 285, s. 4; Unclaimed Goods Sales Act, 1964, R.S.Q., c. 316, ss. 7 and 9 (notice of sale of unclaimed goods by launderers or dyers and fur merchants); Bills of Lading Act, 1964, R.S.Q., c. 318, s. 8 (notice of sale by auction of certain lumber products); Constitut or Tenure System Act, 1964, R.S.Q., c. 322, s. 6 (notice of offer to absent proprietor); Montreal Catholic School Commission Act, 1957-58, 6-7 Eliz. II, c. 53, s. 10 as amended by 1962, 10-11 Eliz. II, c. 17 (notice of appeal against assessment); Provincial Controverted Elections Act, 1964, R.S.Q., c. 8, s. 65 (notice of intention to discontinue petition); Public Health Act, 1964, R.S.Q., c. 161, s. 82 (notice of taking of immoveable belonging to absent owner); Liquor Board Act, 1964, R.S.Q., c. 44, s. 46 (notice of application of permit); Public Inquiry Commission Act, 1964, R.S.Q., c. 11, s. 5 (notice of time and place of first meeting); Companies Act, supra, s. 94 (notice of shareholders' meetings in the absence of express provisions in letters patent or by-laws of the company); Insurance Act, 1964, R.S.Q., c. 295, s. 11 and 181 (notice of general meetings).

When newspapers published in both languages do not exist in the area where the notice is required to be given, provision is normally made for publication in a newspaper in the nearest locality,[1] or sometimes in newspapers of designated key cities[2]. Other statutes provide that in the absence of both French and English newspapers in a given area, the notice is to be published in both languages in the same newspaper[3]. Some recent order-in-council stipulate that calls for tenders on public works or of building subsidies be published simultaneously in both languages in a newspaper published in each language in the region where the work is to be executed, or in default of such newspapers, in both languages in at least one paper published in the region[4]. On the other hand, section 301 of the Education Act[5] specifically forbids the insertion in both languages of a notice in a newspaper published

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1. Arts. 1571a, 1571d and 1671a of the Civil Code; Arts. 719a, 1029 of the Code of Procedure; Education Act, 1964, R.S.Q. c. 235, s. 300; Unclaimed Goods Sales Act, supra, s. 7 and 9; Bills of Lading Act, supra, s. 8; Provincial Controverted Elections Act, supra, s. 65; Liquor Board Act, supra, s. 47; Companies Act, supra, s. 94 and 186.

2. e.g. arts. 1414 and 1421d of the Code of Procedure.

3. Arts. 639 and 717, 1069 and 1352 of the Code of Procedure; Education Act, supra, s. 301; Unclaimed Goods Sales Act, supra, s. 9; Insurance Act, supra, s. 27 (2).

4. Order-in-council 459, Quebec Official Gazette, 1964, p. 1889, s. 15; Order-in-council 2380, 1961, Q.O.G., p. 5283, s. 5; Order-in-council 2372, annex B, article 4, 1961, Q.O.G., p. 138.

5. supra.

in one language only. Sometimes, or course, no alternative is stated for the case when there is no newspaper in the area and this may pose delicate legal problems[1]. Also while normally the statutes refer to the locality of publication of a newspaper, with the widespread and provinde-wide distribution of daily newspapers, it might be advisable to specify as a criterion circulation rather than publication within the district. To our knowledge the only statutes which refer to circulation, rather than publication, in the stated area, are the Public Health Act[2], the Montreal Catholic School Commission Act[3], and the Cities and Towns Act[4]. The legislator also often fails to distinguish between daily newspapers and publications, such as semi-weekly papers and weeklies, which are published less frequently[5].

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1. e.g. arts. 1069, 1352 of the Code of Procedure; Cities and Towns Act, supra, s. 373; Constitut or Tenure System Act, supra, s. 6; Montreal Catholic School Commission Act, supra, s. 10.
2. supra, s. 82.
3. supra, s. 10.
4. supra, s. 373.
5. One notable exception is order-in-council 980, 1965, Quebec Official Gazette, Vol. 97, p. 2981, enacting regulations under the Change of Name Act, Bill 31, 4th Session, 27th Legislature, 14 Eliz. II, 1965.

(c) Posting of notices.- In addition to publication in the Official Gazette or in newspapers, notices are sometimes required to be posted in specified places[1]. In one case an alternative is given between posting up and newspaper notices[2]. Article 1682c of the Civil Code dealing with carriers provides as follows:

> "The following shall be printed in French and in English: passenger tickets, baggage checks, way bills, bills of lading, printed telegraph forms, and contract forms, made, furnished or delivered by a railway, navigation, telegraph, telephone, transportation, express or electric power company, as well as all notices or regulations posted in its stations, carriages, boats, offices, factories or workshops." [3]

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1. Arts. 639 and 717 of the Code of Civil Procedure (notice of sale of moveables and immoveables to be posted in sheriff's office), 1029 (posting of notice of hypothecary actions against unknown proprietor at door of parish church where immoveable is situated); Gas, Water and Electricity Companies Act, supra, s. 4 (posting of notices at church doors); Public Building Safety Act, 1964, R.S.Q., c. 149, s. 31 (notice of exits in certain buildings).

2. Cities and Towns Act, supra, s. 373 (newspaper notices in lieu of posting up).

3. for a discussion of the history of this article, cf. 9.12 (b).

(d) Special notices.- Sections 305 and 306 of the Education Act[1] are the only provisions in Quebec for special notices in the language of the person to whom they are addressed. Section 306 states that if the person to whom the notice is addressed speaks neither English nor French or speaks both languages, then the notice may be given in either language. Attention should also be drawn to article 1682c of the Civil Code quoted in the preceding sub-paragraph which requires printing in both languages of a number of documents and notices issued by common carriers. The Education Act[2] provides that:

> "A summary of the minutes of each meeting of the administrative commission for the pension fund for officers of primary education shall be published in English and French journals of education in the Province designated by the chairman of the administrative commission of the pension fund."[3]

The Revenue Department Act[4] states:

> "The Minister, whenever he shall deem it conducive to the better administration and carrying out of the revenue laws, may, at the public expense, cause to be prepared, printed and distributed, in the English and French languages, or in either, and in such numbers and manner as he may see fit, pamphlets containing such acts or portions of acts, regulations of the Lieutenant-Governor in council, and instructions from the Department relating to the revenue, as he may deem desirable."

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1. supra.
2. supra.
3. s. 555.
4. 1964, R.S.Q., c. 66, s. 20.

9.06 The law of other provinces.-

The statutes of provinces other than Quebec contain very few provisions relating to the language of required public notices. It is generally taken for granted that the language need not be specified as it is bound to be English.

One Saskatchewan statute specifically states that named business establishments must post certain notices in the English language[1]. The Saskatchewan Elections Act[2] provides for proclamations in the English language of nominations, election dates and similar information. On occasion the form of a notice is printed in the statute itself and it is naturally in English[3]. An interesting recognition of the presence of the French ethnic group, although not necessarily of its linguistic rights, is found in the Saint-Boniface College Scholarship Fund Act[4] which states:

> "The auditor shall furnish to the board of directors a statement, certified by him to be correct, setting forth the results of the audit and his recommendations if any; and the board of directors shall publish in a newspaper having circulation in the French speaking communities in Manitoba, a copy of the statement and of the certificate of the auditor."

The only provision we have been able to find outside Quebec which specifically requires publication of a notice in both French and English is the New Brunswick Act dealing with the town of Grand

1. The Cities Act, 1953, R.S.S., c. 137, s. 13.
2. 1953, R.S.S., c. 4, s. 39 (1).
3. e.g. The Oleomargarine Act, 1952, R.S.N.B., c. 164, s. 2 (b).
4. 1962, 11 Eliz. II, c. 126, s. 10 (2), (Man.).

Falls[1] which states:

> "All notices required by this Act shall be printed or written in both English and French in the same document."

9.07 Signs, labels and notice boards.-

We saw in connection with municipalities[2] that individuals or corporations may be required to post certain signs or place certain labels on certain types of equipment or of certain products. A limited amount of similar legislation is also found in higher jurisdictions.

(a) Federal law.- The federal Railway Act[3] requires signboards at all railway crossings in Quebec to be in both languages on pain of a maximum fine of $40.00. Blackboard notices of overdue trains and expected arrivals must be written in English and French in Quebec, although they can be in English only in other provinces[4].

The Customs Tariff[5] provides that the Cabinet may order goods imported into Canada to be marked, stamped, branded or labelled "in legible English or French words".[6] The Opium and Narcotic Drug Act[7] requires the formula or true test of ingredients to be printed on a label as well as a warning that the drug contains codeine, but

1. 1958, S.N.B., c. 106, s. 104 (1).
2. in 8.10.
3. 1952, R.S.C., c. 234, s. 411, as amended by 1958, S.C., c. 40.
4. s. 306 (3).
5. 1952, R.S.C., c. 16.
6. s. 15.
7. 1952, R.S.C., c. 201

does not stipulate the language[1]. The Pest Control Products Act[2] provides for the labelling of packages containing pest control products, but does not refer to the language thereof[3]. The same might be said of the Precious Metals Marking Act[4] or the Patent Medicine Act[5]. The Fertilizer Regulations[6] of the federal Department of Agriculture provide that when fertilizer is sold in Quebec the required information must be printed in both French and in English (French not being required in other provinces) and that in no case must the information be printed in a foreign language[7]. The Food and Drug Regulations[8] provide by implication that drugs or vitamins must have a French or English name[9].

(b) Quebec.- A number of Quebec statutes require such types of notice: the Highway Code (signs bearing the words "school bus" or "écoliers")[10]; Election Act (badges worded "Enumérateur Québec Enumerator")[11]; Public Buildings Safety Act (signs in large characters bearing the words "exit" or "sortie")[12]; Railway Act (signboards with the words

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1. s. 8 (1) (b).
2. 1952, R.S.C., c. 209.
3. s. 9 (1).
4. 1952, R.S.C., c. 215.
5. 1952, R.S.C., c. 220, s. 5.
6. Canada Statutory Orders and Regulations, 1955, Vol. II, p. 1442.
7. s. 7 (2) and (3).
8. P.C., 1954-1915, Canada Statutory Orders and Regulations, 1955, Vol. II, No. 1830.
9. Regulations C.0.001b) and k) and D.01.001 a) and h).
10. 1964, R.S.Q., c. 231, s. 44 (2) (2) (d).
11. 1964, R.S.Q., c. 7, s. 54 (2).
12. 1964, R.S.Q., c. 149, s. 30.

"railway crossing" or "traverse de chemin de fer")[1]. The Quebec Railway Act also provides in s. 154:

> "The directors shall print and post up, or cause to be printed and posted up, in the office, and in all the places where the tolls are to be collected, in some conspicuous place, a printed board or paper exhibiting, in French and English, all the tolls payable, and specifying the price to be charged or taken for carriage of any matter or thing."

This provision should be compared with article 1692c of the Civil Code dealing with carriers.[2]

(c) Other provinces.- In other provinces there are provisions for certain signs that in all cases the wording is given in English[3]. The Saskatchewan Pharmacy Act[4] provides that the list of contents and warning in connection with the administration of codeine to a child under the age of 2 years shall be in English.

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1. 1964, R.S.Q., c. 290, s. 135 (1). It should be noted that the English version of this section only refers to the words "railway crossing" and the French version only to "traverse de chemin de fer". There is no requirement that signs be in both languages.
2. cf. 9.05 (c), and more fully discussed in 9.12 (b).
3. (a) In Manitoba: The Game and Fisheries Act, 1954, R.S.M., c. 94, s. 96 (2) provides that notices on which are written "Hunting or Shooting is forbidden". The Highway Traffic Act, 1954, R.S.M., c. 112, s. 64 (7) provides for signs marked: "School Van".
   (b) In New Brunswick: The Pawnbrokers Act R.S.N.B., 1952, c. 169, s. 9 (2) provides for a sign saying "Pawnbrokers".
   (c) In Ontario: The Highway Traffic Act, R.S.O., 1960, c. 172, s. 93 (3) requires a sign on public vehicles saying "This vehicle stops at all railway crossings"; The Hotel Fire Safety Act, R.S.O. 1960, c. 179, provides in s. 11 for exit signs and at s. 13 provides that "a hotel shall display in each bedroom a floor plan showing the location of the exits and indicating the directions of travel to reach them and also a notice giving the fire safety rules of the hotel". The Hotel Registration of Guests Act, R.S.O., 1960, c. 180, s. 5 (1) provides that a notice of rates should be posted. The Mining Act, R.S.O., 1960, c. 241, s. 241 (2) provides for signs in English on public roads during blasting operations.
4. 1954, 3 Eliz. II, S.S., c. 74, s. 45 (3).

C - OFFICIAL FORMS AND RETURNS

9.08 The language of forms and returns.-

With the growth of social control of private activities, individuals and corporations are required increasingly to fill in certain forms or to make reports or returns to government authorities. Normally the language of such forms or returns is not specified. It is taken for granted that the returns may be made in the language or languages current in the jurisdiction concerned. In Quebec and in Ottawa the practice is to have such returns in either French or English at the option of the person reporting to the authorities. But there is no legislative definition of this right which is based on custom.

(a) Federal law.- The Bank Act[1] requires that copies of the financial statement be sent to the Minister and published in the Canada Gazette[2] and also contains a multitude of other references to statements and documents which have to be submitted, all of them without stipulation of the language of such submissions. The Excise Tax Act[3] states that every person required to pay or collect taxes or place stamps "shall keep records and books of account in English or French" available for inspection[4]. The Citizenship Act[5] requires various declarations from applicants

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1. 1952. R.S.C., c. 12.
2. s. 53.
3. 1952. R.S.C., c. 100.
4. s. 55 (1).
5. 1952. R.S.C., c. 33.

for citizenship. While the forms are standard and in English and French combined, or sometimes in separate English and French versions, we were advised by a letter dated October 26. 1965, from Mr. R. E. Williams, Legal Adviser to the Department of Citizenship and Immigration, in reply to inquiries we had made, that any declaration could be completed in either English or French (or, for that matter, in any other language). The necessary translation would be provided by the Registrar when necessary.

We also draw attention to s. 34 of the Trade Mark Rules[1] which allows the Registrar to require an applicant for registration of a trademark to furnish him for indexing purposes with a description of the trademark and a "translation to English or French" of any words in any other language appearing in the trademark.

(b) Alberta.- In the Alberta Companies Act[2] we found the following provision which seems to place French at the same level as any foreign language since it permits companies to make returns only in English:

> "Except where the Company is a private company the annual return shall include a written copy, certified by a director or the manager or secretary of the company to be a true copy, of the last balance sheet that has been audited by the company's auditors, including every documents required by law to be annexed thereto,

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1. P.C., 1954-692.
2 1955, R.S.A., c. 53.

> together with a copy of the report of the auditors thereon, certified as aforesaid, and if any such balance sheet is in a foreign language there shall also be annexed to it a translation thereof in English, certified in the prescribed manner to be a correct translation."[1]

(c) Manitoba.- The Manitoba Workmen's Compensation Act[2] somewhat cryptically provides that a notice of injury by a workman or of death to an employer "shall be in ordinary language" -- presumably English. On the other hand the Manitoba Employment Standards Act[3] seems to give official recognition to the French language by requiring employment records to be kept in English or in French according to the language of the employee:

> "Unless the minister authorizes him in writing to dispense therewith, every employer shall maintain in his principal place of business in the province a true and correct record in the English language or, if he is a French-speaking person a similar record in the French language, of the following particulars in respect of each of his employees:
>
> (a) The hours worked or on duty each day, showing overtime hours separately.
>
> (b) The rate of wages at which the employee is employed.
>
> (c) The dates upon which wages have been paid to each employee.

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1. s. 130 (3).
2. 1955, R.S.M., c. 297, s. 12.
3. 1957, 5-6 Eliz. II, (Man.), c. 20.

(d) The amount paid on each such occasion.

(e) The amount of every deduction made from wages and the particulars thereof.

(f) The date of commencement of present term of employment.

(h) The occupation of the employee.

(i) Where an employee works or is on duty on a general holiday, the rate of wates paid therefor.

(j) Each annual vacation granted, showing

(i) the date of commencement and the date of completion of the vacation;

(ii) the period of employment in respect of which the vacation was given;

(iii) the amount of vacation pay given and the date upon which it was paid.

(k) The amount of money paid in lieu of an annual vacation upon termination of employment, and the date of such payment.

(l) The date when employment ceases."[1]

(d) New Brunswick.- At one time New Brunswick medical practitioners were permitted to prescribe liquor necessary for health reasons in either English or French[2], but this provision was repealed[3].

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1. s. 5 (1).
2. Intoxicating Liquor Act, R.S.N.B., 1952, c. 116, s. 51 (1).
3. by the 1961-62 S.N.B., c. 3.

(e) Newfoundland.- The Companies Act[1] provides that "where any document required to be filed under this section is not in the English language, the Registrar may require a translation thereof notarially certified."

(f) Quebec.- In Quebec the usual practice is to permit all returns to be in either French or English and practically all official forms are in both languages. Attention should be drawn to the following provisions of the Workmen's Compensation Act[2]:

> "20. (1) Subject to subsection 5 of this section, compensation shall not be payable unless notice of the accident is given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured and unless the claim for compensation is made within six months from the happening of the accident, or, in case of death, within six months from the time of death.
>
> (2) The notice of the accident shall give the name in full and address of the workman and shall be sufficient if it states in ordinary language the cause of the injury and where the accident happened."
>
> "21. (1) Every employer shall, within the two working days after the happening of an accident by which a workman in his employ is disabled from earning full wages or which necessitates medical aid, notify the Commission in writing ...

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1. 1952, R.S.Nfld., c. 168, s. 260 (6).
2. 1964, R.S.Q., c. 159.

(2) The notice shall be drawn up in the mother tongue of the injured person if that is English or French, and otherwise in whichever of such tongues he chooses. It shall not be signed by him unless all the blanks have been filled in and the employer shall give him a complete copy thereof."

9.09 Language of ballots and other forms.-

Another area involving possible linguistic legislation is that of official forms or ballots which are required or provided by certain statutes. For instance, in Quebec, the Education Act[1], the Cities and Towns Act[2] and the Quebec Temperance Act[3] all provide for ballots and electoral forms in both languages. Section 12a of the by-laws of the College of Dental Surgeons of the Province of Quebec[4] provides that ballots and official envelopes are printed in both French and English.

In New Brunswick we found that an amendment to the Municipal Debentures Act[5] provides that forms AA and BB are to be in French. The 1958 statute dealing with the town of Grand Falls[6] provides that ballot papers are to be bilingual.

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1. 1964, R.S.Q., c. 235, forms 25 and 27.
2. 1964, R.S.Q., c. 193, form 19.
3. 1964, R.S.Q., c. 45, s. 9.
4. adopted pursuant to the Dental Act, 1964, R.S.Q., c. 253.
5. 1954, 3 Eliz. II, S.N.B., c. 62.
6. 1958, S.N.B., c. 106.

D - LANGUAGE AS A LEGAL REQUIREMENT FOR CERTAIN OFFICIAL, PROFESSIONAL AND PRIVATE FUNCTIONS.

9.10 Language as a legal requirement for official, professional and private employment.-

Most positions in the Civil Service and in the government are not regulated by special language provisions. While we have not conducted specific research on the operations of the Civil Service, we have nevertheless studied the various statutory rules and regulations dealing with the language requirement for admission to certain positions in the government, in the professions or even in private industry.

(a) Federal statutes and regulations.- The Canada Medical Act[1] provides that a majority of the committee conducting the examination of any candidate shall speak the language in which the candidate elects to be examined[2]. Admission to citizenship requires an adequate knowledge of either English or French[3]. Under the Civil Service Act[4] it is permitted to hire employees qualified in either or both languages as the need arises[5]. Furthermore, there are a number of pertinent federal regulations. The Civil Service Regulations[6] used to provide for the right of candidates to write examinations in either English or French[7] except in cases where a bilingual candidate was required[8].

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1. 1952, R.S.C., c. 27.
2. s. 16 (2).
3. Canadian Citizenship Act, 1952, R.S.C., c. 33, ss. 10 (1) (e) and (5) (b).
4. 1960-61, S.C., c. 57.
5. s. 47.
6. P.C., 1954-2055, 1955-1 Canada Statutory Orders and Regulations, No. 617.
7. s. 19.
8. s. 32 A.

But, both these provisions have disappeared from the 1962 revision of the Regulations. The General By-law for the Montreal Pilotage District[1] adopted pursuant to the Canada Shipping Act, states that no application for admission to the pilotage service shall be accepted from a person who is unable to speak and to understand both French and English[2]. The same rule is found in the General By-law of the Quebec Pilotage District[3]. The Penitentiary Service Regulations[4] provides for preference to be given to candidates for positions who, all other things being equal, are "qualified in the knowledge and use of both the English and French language"[5]. While s. 1.35 states:

> "The number of members appointed to serve in any headquarters or in any institution who are qualified in the knowledge and use of the English or French language or both shall, in the opinion of the Commissioner, be sufficient to enable the headquarters or institution to perform its functions adequately and to give effective service."

(b) Alberta.- The Municipal Districts Act[6] provides that:

> "No person is qualified to be elected a member of the council of a municipal district unless at the date of his nomination
>
> (a) he can read and write in the English language."

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1. P.C., 1961-1475, 1961 Canada Gazette, p. 1597 or 1961 Canada Statutory Orders and Regulations, No. 458.
2. s. 26 (3) (b).
3. P.C. 1957-191, s. 27 (3) (b), 1957 Canada Gazette, Part II, p. 182, 1957 Canada Statutory Orders and Regulations, No. 51, as amended by P.C. 1961-425, Canada Gazette, Part II, p. 427, 1961 Canada Statutory Orders and Regulations, No. 114.
4. P.C. 1962-302, 1962 Canada Gazette, Part II, p. 295, 1962 Canada Statutory Orders and Regulations, No. 90.
5. s. 1.31 (2)
6. 1955, R.S.A., c. 215, s. 85.

The Alberta City Act[1] requires that all candidates to the mayoralty or the council of a city must "speak, read and write the English language"[2]. The Coal Mines Regulation Act[3] stipulates that no one shall be granted a miner's certificate or a provisional miner's certificate unless "he has a sufficient knowledge of the English language to give and understand working directions and warnings"[4], and that no one shall hold or be granted a miner's permit unless "he has sufficient knowledge of the English language to understand working directions and warnings"[5].

(c) British Columbia.- The Metalliferous Mines Regulations Act[6] provides that no person shall be granted a provisional or permanent blasting certificate "unless he is able to give and receive orders in the English language"[7]. Furthermore, no shift boss certificate shall be granted to any applicant who is not "conversant with the English language"[8].

(d) Manitoba.- Some interesting provisions are to be found in the Manitoba statutes. Under the Public Schools Act[9] no one can qualify as a trustee of a rural school[10] or in a

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1. 1955, R.S.A., c. 42.
2. s. 96 (1).
3. 1955, R.S.A., c. 47.
4. s. 72 (c).
5. s. 73 (b). We will see similar provisions in Alberta and Ontario law.
6. 1960, R.S.B.C., c. 242.
7. s. 15 (5).
8. s. 20 (3) (a).
9. 1954, R.S.M., c. 215.
10. s. 88.

municipal school district[1] or as trustee of a school division[2] unless he is "able to read and write English". The charters of the cities of Brandon[3] and East Kildoman[4] declare that no one is eligible for election as mayor or alderman unless he is able to read or write the English language. On the other hand, the Metropolitan Winnipeg Act[5] states that to qualify for election as member of the Metropolitan Councils it is sufficient to be "able to read the English or French language and write it from dictation"[6]. We also draw attention to the statute incorporating the St. Boniface College Scholarship Fund[7] which states that the board of directors of the corporation shall consist of 13 members "who shall at all times be French-speaking and of the Roman Catholic Faith".[8]

(e) New Brunswick.- The only relevant provision found is the Act to incorporate L'Association des Instituteurs Canadiens[9] section 7 of which provides that all French-speaking teachers whose membership fees have been duly paid are members of the association.

(f) Northwest Territories.- The Jury Ordinance[10] stipulates that to qualify as a juror in the Northwest Territories a person must be "able to speak and write the English language". The Coal Mines Regulation Ordinance[11] forbids the appointment of any one "unable to speak or read English" to a position of trust or responsability in or about a mine. The School

1. s. 111.
2. s. 447 (4).
3. 1955, 3-4 Eliz. II, S.M., c. 86, s. 7 (1).
4. 1957, 5-6 Eliz. II, S.M., c. 80, s. 11 (1) (b).
5. 1960, 8-9 Eliz. II, S.M., c. 40.
6. s. 20 (1) (c).
7. 1962, 11 Eliz. II, M.S., c. 126.
8. s. 2.
9. 1958, S.N.B., c. 70.
10. 1956, R.O.N.T., c. 55, s. 5 (i).
11. No. 9 of 1898, s. 38(34)

Ordinance[1] seems to recognize the right of parents to have their children education in a language other than English by providing for teachers qualified to teach in a foreign language:

> "The Board may subject to the regulations employ one or more competent persons to give instruction in any language other than English in the school of the district to all pupils whose parents or guardians have signified a willingness that they should receive the same but such course of instruction shall not supersede or in any way interfere with the instruction by the teacher in charge of the school, as required by the regulations and this Ordinance."

(g) Ontario.- Some indirect recognition of the French fact is found in Ontario statutes dealing with education. The Teaching Profession Act[2] stipulates that the Board of Governors of the Federation shall consist, among others, of 5 representatives of L'Association de l'Enseignement Français de l'Ontario. The Ontario School Trustees' Council Act[3] states that the council shall consist, among others, of representatives of L'Association des Commissaires des Ecoles Bilingues d'Ontario. On the other hand, the Mining Amendment Act[4] provides that every foreman "shall be able to give and to receive and understand orders in the English language" and that every person in charge as a

1. 1956, R.O.N.T., c. 86, s. 97 (2).
2. 1960, R.S.O., c. 393, s. 5.
3. 1960, R.S.O., c. 278, s. 3.
4. 1961-62, O.S., c. 81, s. 173.

deckman, cagetender, skiptender or hoistman "shall have a knowledge of the English language adequate for enabling him (sic) to carry out his duties in a thoroughly safe manner".

(h) Quebec.- The Jury Act[1] disqualifies as jurors persons who do not speak either English or French fluently. Even in juries de medietate linguae jurors are not required to be bilingual, but to know either English or French, depending on the panel to which they belong[2]. The Bailiffs' Act[3] states that no one shall be admitted as a bailiff of the Superior Court unless he is able to write either English or French "with sufficient grammatical correctness"[4]. The Provincial Police Force Act[5] used to require all members of the Force to have a fair knowledge of both English and French, but this requirement has been eliminated[6]. The Fire Investigations Act[7] demands that the Secretary of the Fire Commissioner of Montreal speak and write "the French and English languages correctly"[8]. The Medical Act[9] provides that the examiners whom the Provincial Medical Board shall assign to Laval University at Quebec and to the University of Montreal shall be French-speaking physicians and those whom it shall assign to McGill University shall be

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1. 1964, R.S.Q., c. 26, s. 3 (e).
2. Jury Act, supra, s. 38 and art. 436 (2) of the Code of Civil Procedure.
3. 1964, R.S.Q., c. 28.
4. s. 1.
5. 1941, R.S.Q., c. 47, s. 15.
6. 1964, R.S.Q., c. 40, s. 15.
7. 1964, R.S.Q., c. 188.
8. s. 15.
9. 1964, R.S.Q., c. 249.

English-speaking physicians.[1] The Dental Act[2] states that the affairs of the College shall be conducted by a board of governors called the Provincial Board of Dental Surgery which shall consist of representatives of the various dental faculties (hence French- or English-speaking as the case may be)[3]. The Engineers Act[4] provides that a board of examiners to examine applicants for admission to the practice of the profession shall be appointed by the various universities in Quebec among others, indirectly implying a linguistic qualification. The Bar Act[5] has a similar provision in relation to the board of examiners. Obviously the fact that a particular official is appointed from a French-speaking or English-speaking university does not necessarily imply that his mother tongue is that of his university, but it renders such situation likely. A number of interesting linguistic provisions are found in the Parish and Fabrique Act[6]

> "31. Whenever, in a Roman Catholic Parish or in two or more neighboring parishes, there exists a Roman Catholic minority speaking a language different from that of the majority, such minority or a portion of such minority may be erected into a distinct parish for all temporal purposes of their religion, and shall constitute a corporation under the name of 'Congregation of the Roman Catholics of speaking the language'."

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1. s. 40 (1).
2. 1964, R.S.Q., c. 253.
3. s. 9.
4. 1964, R.S.Q., c. 262, s. 13.
5. 1964, R.S.Q., c. 247, s. 76 (1).
6. 1964, R.S.Q., c. 303.

"33. The head of the family shall determine the nationality to which his family belongs; and whenever, in two parishes of different nationalities in the same territory, there is a contestation for the purpose of ascertaining to which of two parishes one or more families should contribute for religious purposes, the Roman Catholic ordinary in the diocese in which such parishes exist shall determine the parish to which such families shall contribute for the temporal purposes of religion."

"34. The Roman Catholic bishop of the diocese in which such congregation exists may annex thereto the parishioners of a neighboring parish, speaking the same language who apply to be thus annexed."

The Act respecting the Board of Roman Catholic School Commissioners of Quebec[1] states that the Board shall consist of 7 members, one of whom must be of the English language[2]. An identical provision is found in the Montreal Catholic School Commission Act[3]. According to regulations adopted under the Stationary Enginemen Act[4] candidates to the title of inspector must speak both French and English "fluently" although for other positions a sufficient knowledge of one language will be enough[5]. The regulations adopted pursuant to the Industrial and Commercial Establishments Act[6] provide that hoisting engineers "shall be able to speak and read the French or English language"[7].

(i) Saskatchewan.- The Saskatchewan School Act[8] requires nominees for the office of school trustee to be able "to read and write and to conduct school meetings in the English language" and to subscribe a declaration to that effect[9]. The Larger School

1. 1947, 11 Geo. VI, S.Q., c. 79.
2. s. 1.
3. 1947, 11 Geo. VI, S.Q., c. 80, s. 1.
4. 1964, R.S.Q., c. 157.
5. ss. 20 and 44.
6. 1964, R.S.Q., c. 150.
7. Order-in-council No. 545 of the 22nd of February, 1935, s. 22.
8. 1953, R.S.S., c. 169.
9. ss. 30 (2) and (4), 74 and 75 (2).

Units Act[1] provides that trustees have to have the same qualifications as provided in s. 74 of the School Act and that in the Candidates Acceptance and Attestation there be a statement that he is able to read, write and conduct school meetings in English.

(j) Yukon.- The Yukon School Ordinance[2] recognizes bilingualism in that it states that a person is qualified to become a school trustee if he "is able to read and write in either the English or French language".

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1. 1953, R.S.S., c. 170, s.16.
2. 1962, R.O.Y.T., (1st session), c. 7, s. 7 and s. 27 (b).

9.11 The language of examinations for official and professional employment.-

Another facet of the legislative regulation of language qualification is to be found in the regulation of examinations for admission to certain official positions or professions.

(a) Federal jurisdiction.- The Canada Medical Act[1] allows candidates for examinations to write them in either English or French. Under the Civil Service Act[2] examinations or interviews are conducted in English or French "at the option of the candidate". The Civil Service Regulations[3] state:

> "Any subject of any examination may be written in either English or French at the option of the candidate, but the choice of language must be made at the time of application."

On the other hand, the Foreign-going Masters and Mates Examination Regulations[4] state:

> "An applicant may be required to display his ability to write clear grammatical English in the form of an essay, a precis or an exercise in letter writing."

The Masters and Mates of Home-Trade Inland and Minor Waters

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1. 1952, R.S.C., c. 27, s. 16 (1).
2. 1960-61, S.C., c. 57, s. 38 (2).
3. P.C., 1954-2055, 1955-1 Canada, Statutory Orders and Regulations, No. 617, s. 19.
4. P.C., 1958-1508, 1958-457 Canada, Statutory Orders and Regulations, no. 1271, s. 16, adopted pursuant to the Canada Shipping Act, 1952 R.S.C., c. 29.

Vessels Examination Regulations[1] state that all applicants "shall be required to pass the written examination in English". The Penitentiary Service Regulations[2] stipulate that examinations, tests or interviews for applicants "shall be conducted in the English or French language, or both, at the option of the candidate".[3]

(b) Manitoba.- The University of Manitoba Act[4] states:

> "The examination for any degree to be conferred by the University may be answered by the candidate in either the English or French language."

On the other hand the Land Surveyors Act[5] requires all candidates for admission to the study of surveyorship to pass an examination in, among other subjects, "English grammar"[6].

(c) Quebec.- The Medical Act[7] provides that all examinations shall be conducted in English and French. French and English are also stated to be the only official examination languages in the Veterinary Surgeons Act[8]. The Land Surveyors Act[9] requires candidates to the admission to study of land surveying to have a "sufficient knowledge of one of the official languages", and to be able to translate "correctly" into the other language. The Notarial Act[10] on the other hand, requires candidates to

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1. P.C. 1957-1498, 1957-457 Canada, Statutory Orders and Regulations, no.1214, as amended by P.C. 1963-51, 1963-51 Canada, Statutory Orders and Regulations, no. 42, schedule D, s. (6).
2. P.C. 1962-302, 1962, Canada, Statutory Orders and Regulations, No. 300-301.
3. s. 1.27 (2).
4. 1954, R.S.M., c. 276, s. 64.
5. 1954, R.S.M., c. 135, as amended by 1963, 12 Eliz. II, c. 43.
6. s. 20 (1).
7. 1964, R.S.Q., c. 249, s. 38.
8. 1964, R.S.Q., c. 259, s. 36.
9. 1964, R.S.Q., c. 263, s. 31.
10. 1964, R.S.Q., c. 248, s. 36.

know either French or English.

The regulations adopted under the Stationary Enginemen Act[1] provide[2] that examination questions are to be answered in either French or English[3].

By-law 40 of the Bar of the Province of Quebec provides for the distribution of examination questions to applicants for admission to the Bar in both French and English.

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1. 1964, R.S.Q., c. 157.
2. 1942 Quebec Official Gazette, Vol. 74, p. 2901 (order-in-council no. 2745).
3. s. 19.

E - OTHER REGULATIONS OF PRIVATE ACTIVITIES

9.12 Linguistic regulations of private activities.-

(a) Federal law.- The Trade Marks Act[1] provides that a trademark is not registrable if it is either clearly descriptive or deceptively misdescriptive "in the English or French languages" of the character or quality of the wares or services in association with which it is used[2]. If the applicant bases his claim to registration of a trademark in another country, he shall supply to the Registrar a certified copy of such prior registration together with a translation thereof in English or French.[3]

The Immigration Aid Societies Act[4] stipulates that any negotiable or other instrument authorized under the Act "may be drawn in any European language understood by the person executing it, and the sums of money mentioned therein may be expressed in any currency used in the country where it is executed"[5].

The Federal Railway Act[6] requires that all timetables and bills of lading to be used in the Province of Quebec be bilingual. As we have seen[7] article 1682c of the Quebec Civil Code contains a similar provision.

(b) Quebec.- We have already noted[8] article 1682c of the Quebec Civil Code which stipulates that passenger tickets, baggage

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1. 1952-53, 1-2 Eliz. II, c. 49.
2. s. 12.
3. s. 30 (1).
4. 1952, R.S.C., c. 146.
5. s. 3.
6. 1952, R.S.C., c. 234, s. 353 (4).
7. In 9.05 (c).
8. In 9.05 (c).

checks, way bills, bills of lading, printed telegraph forms, and contract forms supplied by public carriers in Quebec must be printed in both languages. Article 1682c was introduced into the Civil Code by the so-called Lavergne Act[1]. Some doubt was cast as to the legality of a province legislating on companies which fall under federal jurisdiction pursuant to s. 92 (10) of the B.N.A. Act. At the time, the Canada Law Journal editorialized as follows[2]:

"LANGUAGE v. LAW

> The demand made by the leaders of the French population in the Province of Quebec that all railway tickets, time tables, etc., should be printed in French as well as in English, makes very clear some important features in our political condition. How a railway ticket can be printed in two languages when the name of the place remains the same in either, it is hard to understand, but the absurdity of the demand only emphasizes its political importance. Two facts stand prominently forth which are worthy of the consideration of those who speak so fervently and eloquently of the unity of the two races, and the consolidation of the Dominion as its happy result. The demand above referred to having been properly rejected by the Parliament of the Dominion, and improperly and illegally, in our opinion, accepted by the Provincial Assembly, and having after some demur been agreed to by the railway authorities, is removed from present controversy, but remains to point the moral if not to adorn the tale.
>
> The facts to which we would call attention are, first, the evidence given of the tenacity with which, even in so trivial a matter, the French Canadian holds to his policy of maintaining

1. 1910, 1 Geo. V, S.Q., c. 40.
2. 1911, 47 Canada L.J., 52.

> intact the use of his language, the independence of his race, and, secondly, the conclusion to be drawn from the easy yielding to so preposterous a demand by the railway companies, involving to them very considerable expense and inconvenience without any compensating advantage. When even a railway company has to take into account the loss it may sustain from the hostility of the population which it serves, based upon such trivial grounds as those above referred to, further comment is needless."

But the right of provinces to regulate the property and civil rights aspects even of companies operating in a field which falls under federal jurisdiction was upheld two decades later by the Privy Council[1]. The formalities of contracts are deemed to be a provincial matter.

We have also noted that Quebec law requires individuals to give certain notices in one or both languages. Other relevant linguistic regulations of private activities are to be found in Quebec statutes. The most important of these provisions is s. 51 of the Labour Code[2]:

> "Either party may demand that the agreement be drawn up in both the English and the French languages."

Ordinance No. 39 of 1962, dealing with forest operations[3] stipulates:

> "The employer must take the necessary steps to have the engagement contract, notices, regulations and other documents written in French or English, according to the language of the employee concerned." [4]

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1. Lymburn v. Mayland, [1932] A.C. 318.
2. 1964, R.S.Q., c. 141.
3. made pursuant to the Minimum Wage Act, 1941, R.S.Q., c. 164.
4. s. 38.

CHAPTER X

INCORPORATIONS, LETTERS PATENT, PERMITS AND LICENCES

10.01 Introduction.-

An important area of public administration in which language rights may come into play is that of corporation charters, permits and licences granted by the authorities to individuals requesting them. This is a vast area to which we have only alluded and which we did not examine in detail. Although this field of activity is naturally germane to the objectives of the present research project, it did not fall within the strict bounds of the project and we neither had the time nor the resources to make an adequate study. It is to be hoped that this gap will be filled by other research projects commissioned by the Royal Commission or carried out subsequently. We have had occasion, however, to survey municipal practices in this connection[1], but apart from this limited examination of municipal permits, we regret to say that we have left generally untouched the entire domaine of government permits, licences and certificates.[2] One aspect of the question about which we gathered sufficient information, however, is that of company charters. Corporations are artificial persons possessed of almost all the legal rights and duties of human beings. They are created, at least in the case of most commercial corporations, by letters patent issued by the competent provincial or federal government department, upon petition to that effect from private

1. cf. 8.12.
2. Except insofar as we have studied the linguistic requirements for certification in certain positions: cf. 9.10 and 9.11.

individuals. In the case of the more important commercial corporations (banks, insurance companies, national carriers and the like), professional corporations (lawyers, doctors, engineers, etc.) and of municipalities, the charter generally emanates from Parliament or the Provincial Legislature, as the case may be, rather than by grant from an administrative entity. Parliamentary charters are created by private or public bill. In this chapter, we are mainly concerned with the statutory creation of corporations.

10.02 Federal incorporations.-

With respect to private corporations, the Canada Corporation Act[1] always permitted companies to have a name in either English or French or in both languages. Section 22 (2) stated:

> "If the company has a name consisting of a separate or combined French and English form, it may from time to time use, and it may be legally designated by, either the French or English form of its name or both forms."

Section 22 (3) (b) declared:

> "A company shall ...
>
> (b) keep its name engraved in legible characters on its seal and, if the company has a name consisting of a French and English form, whether separated or combined, the company shall show on its seal both the French and English forms of its name or shall have two seals, each of which shall be equally valid, one showing the French and the other the English form of its name;"

1. 1952 R.S.C., c. 53, as amended by 1964-65, c. 52 in force July 1,1965. It should be noted that under Schedule A of the Bank Act, 1953-54 S.C., c. 48, charter banks are authorized to carry on business under their French names as well as under their English names.

Section 26 provided for the right to change the name of a company by applying for supplementary letters patent to that effect. In other words, a corporation incorporated by letters patent could always apply for a French or English name or for both forms, either at its creation or at a subsequent date.

But insofar as corporations created otherwise than by letters patent were concerned, nothing less than an amendment to their original statute would suffice to change their name or to provide a translation thereof if they did not have a bilingual name[1]. Of course, many statutory charters provided for bilingual names[2]. A recent amendment to the Corporation Act[3] which added section 208A thereto, now enables such corporations to request the Secretary of

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1. Recent random examples of statutes passed by Parliament for the sole purpose of adding a French version of an English corporate name are: 1964-65, 13-14 Eliz. II, c. 56 (Allstate Insurance Company of Canada), c. 57 (The Casualty Company of Canada), c. 58 (The Dominion Life Assurance Company), c. 59 (The Dominion of Canada General Insurance Company), c. 60 (The Economical Mutual Insurance Company), c. 61 (The General Accident Assurance Company of Canada), c. 62 (Scottish-Canadian Assurance Corporation), c. 71 (The Guarantee Company of North America), c. 79 (The Quebec Board of Trade).

2. e.g. An Act respecting Canadian General Insurance Company, 1960-61 S.C., c. 67; An Act to incorporate the Equitable General Insurance Company, 1960-61 S.C., c. 70; An Act respecting The Canada Permanent Trust Company, 1960-61 S.C., c. 77; An Act to incorporate Canadian Federation of Music Teachers' Associations, 1960-61 S.C., c. 81; An Act respecting The Canadian Council of The Girl Guides Association, 1960-61 S.C., c. 80; An Act re The Canadian General Council of the Boy Scouts Association, 1960-61 S.C., c. 82; An Act to incorporate International Brain Research Organization, 1960-61 S.C., c. 84; The Canadian Indemnity Co. & Canadian Fire Insce. Co., 1962, 10-11 Eliz. II, c. 31; Mutual Life Insce. Co. of Canada, 1962, 10-11 Eliz. II, c. 32; Reliance Insce. Co. of Canada, 1962, 10-11 Eliz. II, c. 33; Sun Life Assurance Co. of Canada, 1962, 10-11 Eliz. II, c. 34; Westmount Life Insurance Company, 1962, 10-11 Eliz. II, c. 35; Imperial Life Assurance Company, 1962, 11 Eliz. II, c. 18; Merit Insce. Co., 1962, 11 Eliz. II, c. 19; North American General Insce. Co., 1962, 11 Eliz. II, c. 20; Eastern Trust Company, 1962, 11 Eliz. II, c. 24.

3. 1964-65, S.C., c. 52, s. 50.

State to provide them with a French or English form of their corporate name:

"(1) Corporate name in French or English form.- Subject to subsection (5), a body corporate created otherwise than by letters patent for any of the objects for which the legislative authority of the Parliament of Canada extends may request the Secretary of State to provide it with a French or English form of its corporate name and the Secretary of State, by order, may, in accordance with the request, provide the body corporate with a French or English form of its corporate name.

(2) Order to be published.- An order made under subsection (1) shall be published by the Secretary of State in the Canada Gazette.

(3) Not to be identical or objectionable.- A requested French or English form of a corporate name shall not be given to a body corporate under this section if

(a) the requested form is the same as or similar to the name under which any other corporation, association or firm, in existence, is carrying on business in Canada or is incorporated under the laws of Canada or any province thereof, or so nearly resembles such other name as to be calculated to deceive, unless the existing corporation, association or firm is in the course of being dissolved or of changing its name and signifies its consent in such manner as the Secretary of State may require; or

(b) the requested form is otherwise on public grounds objectionable.

(4) Effect of order.- After the publication of an order under subsection (1), the body corporate mentioned in that order may from time to time as it sees fit use, and it may be legally designated by, either the French or English form of its corporate name as provided in the order, or both forms; and, except as provided in this subsection, the provision of a French or English form of a corporate name does not affect in any way the rights, powers, obligations or liabilities of the body corporate.

(5) Application of section restricted.- The provisions set out in paragraph (b) of subsection (3) of section 22 apply in respect of any body corporate provided with a French or English form of its corporate name pursuant to this section.

(6) This section does not apply to a company incorporated under any of the Acts mentioned in paragraph (b), (c) or (d) of subsection (1) of section 5 or to a company carrying on a business described in paragraph (a) of subsection (1) of that section."

The statutes referred to in subsection (6) of s. 208A of the Act are: the Canadian and British Insurance Companies Act[1], the Trust Companies Act[2], the Loan Companies Act[3] and the statutes of railways, telegraph and telephone companies[4]. The three statutes referred to specifically in s. 208A (6) were amended simultaneously by one single statute at the time of the

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1. 1952 R.S.C., c. 31, as amended.
2. 1952 R.S.C., c. 272, as amended.
3. 1952 R.S.C., c. 170, as amended.
4. e.g. Canadian National Railways Act, 1955, S.C., c. 29, as amended; Canadian Overseas Telecommunication Corporation Act, 1952, R.S.C., c. 42, as amended; Trans-Canada Airlines Act, 1952, R.S.C., c. 268, as amended; Bell Telephone Company of Canada Act, 1880, S.C., c. 67, as amended.

foregoing amendment to the Corporations Act.[1]

The amendment provides that an insurance company, a trust company, or a loan company, may ask the Governor in Council (i.e. the Cabinet itself as against the Secretary of State for companies incorporated by letters patent) "to provide it with a French or English form of its corporate name". A notice of such request must be published in the Canada Gazette as must the order made pursuant to such request. The amendment further provides:

> "A requested French or English name shall not be given under this section if
>
> (a) the requested form is the same as the name of any corporation, association or firm carrying on business in Canada, or incorporated under the laws of Canada or of any province thereof, or so nearly resembles that name as to be, in the opinion of the Governor in Council, likely to deceive or likely to be confused with that name, unless the corporation, association or firm is in the course of being dissolved or of changing its name and signifies its consent in such manner as the Governor in Council may require; or
>
> (b) the requested form is otherwise on public grounds objectionable.
>
> "After the publication of an order made under subsection (1), the company mentioned in that order may from time to time as it sees fit use, or it may be legally designated by either the French or English form of its corporate name as provided in the order, or both forms, and, except as provided in this subsection, the provision of a French or

1. 1964-65, S.C., c. 40, ss. 4, 27 and 35.

English form of a corporate name does not affect in any way the rights, powers, obligations or liabilities of the company."[1]

There will thus no longer be any need to tie up the legislative process to effect the bilingualization of corporate names.

10.03 Provincial corporations.-

A varying degree of recognition of the right to bilingual corporate names is given by the various provinces and territories. Our limited survey has disclosed the following situation:

(a) Alberta.- The Legislature of Alberta has enacted statutes which emphasize the activities of the French ethnic communities in Alberta. Even though English is accepted as the official language of the province of Alberta,[2] we found many private Acts which give to some corporations a corporate name written in French only. For example there is the Association Canadienne-Française de l'Alberta of which the objects are to promote the intellectual, moral, social and material welfare out of Canadians of French origin in Alberta, the study of the French language, and the formation of adult education groups[3]. There is The Catholic Archdiocese of Edmonton[4] "which may establish parishes or missions within the Archdiocese with a corporate name of 'The Catholic Parish of ...' or 'The Catholic

1. s. 4.
2. cf. 13.11(e)
3. Incorporated by (1964) 13 Eliz. II, S.A., c. 107.
4. Incorporated by (1957) 6 Eliz. II, S.A., c. 108.

Mission of ...' or 'La Paroisse Catholique de ...' or 'La Mission Catholique de ...' ". The only corporate name of Les Soeurs de l'Assomption de la Sainte-Vierge de l'Alberta is French[1]. The recognition of French corporate names is sometimes incidental to another statute[2].

(b) Manitoba.- The same situation is found in Manitoba[3]. The Manitoba Companies Act[4] permits corporations to use the abbreviation "Limited" or "Ltd." in their French version of "Limitée" or "Ltée". The Act further provides:

> "Subject to section 25
>
> (a) the name of a corporation may be set forth in its charter in both its French and English versions; or
>
> (b) any corporation which has a name consisting of a French and English versions, may be legally designated by the French or English version of its name, or by both versions.
>
> Subject to section 25, nothing in sub-section (5) shall prohibit the name of a corporation from being in any language other than French or English."[5]

(c) New Brunswick.- In New Brunswick there are no general provisions concerning the use of the English and of the French languages. But, the statutes of New Brunswick contain many examples of bilingual names of societies, corporations,

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1. (1964) 13 Eliz. II, S.A., c. 130.
2. e.g. An Act to provide for the exemption of certain Lands from Taxation, Bill 132, Second Session of the 1965 Legislature of Alberta, s. 2 of which refers to the Corporation des Soeurs de la Sainte Croix et des Sept Douleurs.
3. L'Association d'Education des Canadiens-Français du Manitoba, incorporated by 1964, 13 Eliz. II, S.M., c. 78; the St. Boniface College Scholarship Fund also incorporated under the name L'Oeuvre des Bourses du Collège de St-Boniface.
4. 1964, 13 Eliz. II (2nd Session), S.M., c. 3.
5. s. 15.

hospitals, and associations, as will be seen anon.

The Credit Unions Act[1] provides that the name may be in English or in French "Credit Union Ltd." or "La Caisse Populaire Ltée". The same Act provides that "the name of a federation incorporated under this Act shall contain in the English or French language, the words 'Credit Union Federation' and as the last word of its name the word 'Limited' or some abbreviation thereof."[2]

The Co-operative Associations Act[3] provides that "the name of an association incorporated under this Act shall contain in the English or French language the word 'Co-operative' or some abbreviation thereof and as the last word of its name the word 'Limited' or some abbreviation thereof." We found many private acts which incorporate hospitals, associations, societies, corporations with a French name and sometimes with both the French and English names. The following examples give an idea of such names:

1. La Société d'Assurances Générales Acadienne, (1957, N.B.S., c. 73).
2. La Caisse Universitaire, (1964, 13 Eliz. II, N.B.S., c. 79).
3. La Société Nationale L'Assomption, (1952, N.B.S., c. 28).

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1. 1963 S.N.B., c. 2, s. 10 (1).
2. s. 3.
3. 1952 R.S.N.B., c. 40, s. 11.

4. The Beauséjour Insurance Company - La Compagnie d'Assurance Beauséjour, (1955, 4 Eliz. II, N.B.S., c. 82).

5. La Société Nationale des Acadiens, (1959, N.B.S., c. 87).

6. Hôpital Jacques Bourgeoys, (1964, 13 Eliz. II, N.B.S., c. 78).

7. L'Hôpital Stella de Kent, (1964, 13 Eliz. II, N.B.S., c. 82).

8. Hôpital St Joseph De Dalhousie, (1960-61, N.B.S., c. 102).

9. Grand Falls General Hospital Inc. - L'Hôpital Général de Grand Sault Inc., (1961-62, N.B.S., c. 111).

10. Les Missionnaires de Notre-Dame de la Salette, (1952, N.B.S., c. 30).

11. Mission La Bonne Nouvelle,(1952, N.B.S., c. 32).

12. Les Servantes du Très Saint-Sacrement, Edmunston, (1953, N.B.S., c. 36).

13. Les Religieuses Hospitalières de St-Joseph de la Province de Notre-Dame de l'Assomption, (1956, N.B.S., c. 74).

14. Les Frères du Sacré-Coeur du Nouveau-Brunswick, (1958, N.B.S., c. 67).

15. An Act to incorporate L'Association des Instituteurs Acadiens, (1958 N.B.S., c. 70) provides, under s. 3 (c) that one of the objects of the corporation is to strive diligently towards bettering the educational standards of the French-speaking student body, by contributing more efficiently to the solution of the problems inherent to bilingual teaching.

16. L'Association des Commissaires d'Ecoles du Comté de Madawaska, (1960, N.B.S., c. 121).

17. Le Collège Maris Assumysta de Bathurst, (1964, 13 Eliz. II, N.B.S., c. 81).

18. Université de Moncton Act, (1963, N.B.S., c. 119) s. 7 of which provides that the university is declared to be a degree-granting French language in New Brunswick, to which, subject to their present charter, the University of Saint Joseph, Université du Sacré-Coeur in Bathurst, and the Université St-Louis in Edmunston, will be affiliated for academic purposes, in the form and with the name of colleges.

19. An Act to Incorporate Mission, La Bonne Nouvelle, (1952, N.B.S., c. 32), of which the purpose of the corporation is to establish and maintain self-governing French-language Baptist churches and institutions.

20. An Act to Incorporate the New Brunswick Dietetic Association, (1958, N.B.S., c. 65,) s. 20 (2) of which provides that the designation of members may be in English or French.

21. An Act to Incorporate "L'Association Acadienne d'Education", (1952, N.B.S., c. 29), s. 4 of which provides that the objects of the corporation are to encourage and promote better educational facilities in the primary, secondary and superior stages, in respect of the French language, to promote the professional interest of French-speaking teachers and to organize the French-speaking school trustees and college and university students. The

corporation may "organize competitions, literary and oratorical contests amongst school, college and university French-speaking students[1]. It was also provided "for the delivery and holding of lectures, exhibitions, public meetings, classes and conferences calculated directly and indirectly to advance the cause of education whether general, professional or technical amongst the French-speaking population of the Province"[2]; and "further and serve the interests of French-speaking students, school trustees and teachers and endeavour to obtain for them conditions conducive to the improvement of their scholastic and professional life"[3].

In 1965 bills were introduced in the New Brunswick Legislature to incorporate under bilingual namesthe Foundation General Insurance Co. (Cie d'Assurance Générale Fondation)[4] and the New Brunswick Association of Social Workers (whose members are entitled to the designation "professional social worker" or "travailleur social professionel")[5]

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1. s. 5 (b).
2. s. 5 (d).
3. s. 5 (f).
4. Bill 20, 3rd Session of the Legislature.
5. Bill 22, 3rd Session of the Legislature.

(d) Newfoundland.- The Companies Act[1] provides that "where any document required to be filed under this section is not in the English language, the Registrar may require a translation thereof notarially certified."

(dd) **Northwest Territories.6**

(e) Nova Scotia.- We found a limited use of French in Nova Scotian corporate names. The Co-operative Associations Act[2] provides that "where the name of an association is stated or expressed in French, the words 'Co-operative' and 'Limited' as part of the name may be expressed or stated in the French equivalent of those words."
Les Religieuses Hospitalières de St-Joseph, Villa St-Joseph-du-Lac, were incorporated by statute in 1961[3]. In the same year, the Acadia Insurance Company was authorized to use a French name[4].

(f) Ontario.- French names are occasionally found in Ontario statutes incorporating, or referring to, various corporate entities[5].

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1. 1952 R.S.Nfld., c. 168, s. 260 (6).
2. 1954, R.S.N.S., c. 53, as amended by 1962, S.N.S., c. 24, s. 6 (a).
3. 1961, S.N.S., c. 108.
4. 1961, S.N.S., c. 122.
5. L'Association Canadienne Française d'Education d'Ontario, 1960, O.S., c. 150; Le Centre des Jeunes de Sudbury (Sudbury Youth Centre), 1962-63, O.S., c. 188; Université St-Paul (St. Paul University), Bill 158, 3rd Session of the Twenty-Seventh Legislature, 1965.
6. **N.W.T. Ordinances of 1902, c.13 provides for the incorporation of "Les Soeurs de Charité de la Providence des Territoires du Nord-Ouest"**

(g) Quebec.- In Quebec corporations have been chartered in either or both languages from time immemorial. Letters patent are in either French or English, depending on the language of the petition. The name demanded can be either French or English or both. However, until 1960, if a company was granted a name in both French and English, it had to be designated simultaneously by both names. In that year, s. 31 of the Quebec Companies Act[1] was amended[2] to read:

> "If the company has a French and an English name, or a name consisting of a French and an English version, it may be legally designated by its French name or its French version thereof, or by its English name or the English version thereof, or by both names or both versions."

A bilingual name will be granted provided the translation from one language to the other is as accurate as possible[3].

The many corporations created by statute generally have bilingual names although this need not be so[4].

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1. 1964, R.S.Q. c. 271.
2. 1959-60, 8-9 Eliz. II, c. 85.
3. Quebec Corporation Manual, ed. by Louis de B. Gravel and James A. Grant, p. 1503.
4. e.g. the Corporation du Pont de Trois-Rivières, constituted by order-in-council 850, 1963 Quebec Official Gazette, Vol. 95, p. 2715, pursuant to 4-5 Eliz. II, c. 161 and 10-11 Eliz. II, c. 36.

(h) Saskatchewan.- In this province we only found passing references to private corporations having French names[1].

(i) Yukon.- Despite our conclusion that the Yukon is still officially bilingual[2], the Companies Ordinance[3] provides:

> "A true copy of the charter and regulations of the Company, verified in the manner satisfactory to the Registrar and showing that the company by its charter has authority to carry on business in the Territory; and if any instrument included in the aforesaid is not written in the English language, a notarially certified translation thereof."

10.04 Conclusions.-

Our survey is far from complete, let alone exhaustive. We have not obtained any statistical data. What we have learned is that most Canadian provinces do not seem to object to incorporating companies that have either a French name only or a bilingual name. Naturally this does not mean that the letters patent or the incorporating statute will be French or bilingual. Nor does it mean that such corporations are given the right to regulate their affairs, draft their by-laws and minutes, and make their returns in a language other than that utilized within the jurisdiction to which it is accountable . Nor, for that matter, do we have any evidence that the right which is granted to French applicants to incorporate in French or in both languages would not also be granted to persons desiring to adopt a corporate name in any other foreign language.

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1. e.g. An Act to provide for Exemption from Taxation of certain Property of Les Filles de la Providence, 1963, 12 Eliz. II, S.S., c. 84; Les Soeurs de Notre-Dame-de-la-Croix, 1962, 11 Eliz. II, S.S., c. 73; Le Collège Catholique Romain de Prince Albert, 1955, S.S., c. 78 and 1961, c. 89; An Act to change the name of Le Collège Catholique de Gravelbourg, to Collège Matthieu, Gravelbourg, 1961, 10 Eliz. II, S.S., c. 91.
2. cf. 1.160.
3. R.O.Y.T. 1958, c. 19, s. 152 (a).

In short, the willingness to grant French or bilingual corporate names is in no way synonymous with the acknowledgement of substantive linguistic rights. At best, it constitutes a very minor element of the legal status of a language in the community. Furthermore, the increase in the number of corporations requesting bilingual names is an indication of their awareness of the need to respect the feelings of French-speaking Canadians with whom they might have to deal.

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